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# **ROUND 3 (CRIMINAL MATTER) 2014**

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# ROUND 3

## Criminal Matter 2014

### **POLICE v FRANCIS**

#### **SUMMARY**

This is a criminal prosecution instituted by the Police against the Defendant under section 313 of the Criminal Code for common assault in circumstances of aggravation.

The Defendant, PETER FRANCIS, is charged that on the 27<sup>th</sup> day of January 2014 at Fremantle in the State of Western Australia he assaulted in circumstances of aggravation, a child under the age of 18 years Charles Jones (D.O. B. 2 February 2004) contrary to the provisions of Section 313 of the Criminal Code (WA).

The Defendant has pleaded not guilty to the charges.

The Prosecution must prove each and every element of the offence beyond reasonable doubt.

The charge will be heard by a Magistrate in the Fremantle Magistrates Court.

#### **The Prosecution and Defence will receive the following:**

1. Summary
2. Legal Notes
3. Magistrates Court Prosecution Notice
4. Statement of Prosecution First Witness [Snr Sergeant Vera Bradley (arresting officer)] - female
5. Statement of Prosecution Second Witness [Nick Parker (bystander)] – male
6. Statement of Defence First Witness [Peter Francis (defendant)] – male
7. Statement of Defence Second Witness [Lana Francis (defendant's spouse)] – female

#### **PLEASE NOTE**

- \* the above outline is also the order of appearance
- \* the gender of each witness is fixed in order to avoid difficulties in references to “he/she” etc. Students playing the part of a witness are to adopt the role of male or female as indicated.

# LEGAL NOTES

## LEGISLATION

### ASSAULT

#### **Section 313 of the Criminal Code provides (unlawful assault is an offence):**

- “any person who unlawfully assaults another is guilty of a simple offence” and is liable –*
- a) *if the offence is committed in circumstances of aggravation to imprisonment for 3 years or a fine of \$36,000; or*
  - b) *in any other case to imprisonment for 18 months or a fine of \$18,000.”*

#### **Section 221 of the Criminal Code defines “circumstance of aggravation” to include:**

- “... circumstances of aggravation means circumstances in which —*
- (a) the offender is in a family and domestic relationship with the victim of the offence;*
  - (b) a child was present when the offence was committed;.....”*

#### **Section 222 of the Criminal Code defines “Assault” as:**

*“a person who strikes, touches, or moves or otherwise applies force of any kind to the person of another, either directly or indirectly without his consent, or with his 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 his consent, under such circumstances that the person making the attempt or threat has actually or apparently a present ability to effect his purpose is said to assault that other person, and the act is called assault.”*

#### **Section 223 of the Criminal Code provides (unlawful unless authorised, justified or excused by law):**

*“An assault is unlawful and constitutes an offence unless it is authorised or justified or excused by law.....”*

### SELF DEFENCE

#### **Section 248 of the Criminal Code provides:**

- “(1) In this section —*
- harmful act*** *means an act that is an element of an offence under this Part*
- (2) A harmful act done by a person is lawful if the act is done in self-defence under subsection (4).*
  - (3) .....*
  - (4) A person’s harmful act is done in self-defence if —*
    - (a) the person believes the act is necessary to defend the person or another person from a harmful act, including a harmful act that is not imminent; and*
    - (b) the person’s harmful act is a reasonable response by the person in the circumstances as the person believes them to be; and*

(c) *there are reasonable grounds for those beliefs.*"

## **DISCIPLINE OF CHILDREN**

**Section 257 of the Criminal Code provides:**

*"it is lawful for a parent or, a person in place of a parent, or for a schoolmaster, to use by way of correction, towards a child or a pupil under his care, such force as is reasonable under the circumstances".*

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## **CASE MATERIAL**

### **ASSAULT**

It is a necessary element of the offence of assault that there must be, on the part of the assailant, an intention to use force or to create in the person being assaulted an apprehension of the use of force:

**Hall v Fonceca** [1983] WAR 309 at 313.

The word "assault" includes 'the intentional or reckless application of force to the person of another'

**Fagan v Metropolitan Police** CR [1969] 1 Q.B.439.

But an assault can be committed without any touching of another person. An "assault" is "any act with intentional or unlawful violence"

**R v Knight** (1988) 35 A.Crim.R. 313.

### **SELF DEFENCE**

Once the issue of self defence has been raised the onus lies on the prosecution to eliminate any reasonable possibility that the Defendant was acting in self defence.

**R v Dziduch** (1990) 47 A.Crim 378.

The issue is whether the Defendant believed on reasonable grounds that it was necessary in self-defence to do what he did. The prosecution must prove, beyond a reasonable doubt, that:

- a) the Defendant had no belief that it was necessary in self defence for him to do what he did, or
- b) that there were no reasonable grounds for that belief.

If the Prosecution fails to establish either fact then the Defendant is entitled to an acquittal.

**R v Dziduch** (1990) 47 A.Crim 378.

## **DISCIPLINE OF CHILDREN**

Lawful correction is a defence to assault of a child by its parent or a person in place of parent or of a pupil by his teacher: **Cleary v Booth** [1893] 1 QB 465

To be lawful the correction must be reasonable in manner and warranted in all the circumstances: **R v Mackie** [1973] Crim. LR. 54.

The punishment must be moderate and reasonable, it must have a proper relation to the age, physique and mentality of the child and it must be carried out with a reasonable instrument. Section 257 should be applied having regard to the standards currently prevailing in the community. The force applied is to be used by way of correction, not of retribution: **Cramer v R** unreported Supreme Court of Western Australia Lib 980620 BC 9805729.

## **KEY ELEMENTS OF THE OFFENCE**

To convict the Defendant of common assault the Prosecution must prove beyond a reasonable doubt:

- a) *that the Defendant strikes, touches, or moves or otherwise applies force of any kind to the child, either directly or indirectly without the child's consent; and*
- b) *'the action of the Defendant was an intentional or reckless application of force.*

To convict the Defendant of common assault in circumstances of aggravation the Prosecution must prove beyond reasonable doubt a) and b) above and also that either

- c) *the Defendant is in a family and domestic relationship with the victim of the offence; or*
- d) *a child was present when the offence was committed*

The Defence raises the issues of self defence and reasonable action for child discipline to suggest that his conduct *is authorised or justified or excused by law*. Accordingly for the Prosecution to succeed in this case, the Prosecution must also prove:

- e) *in regard to self defence that:*
  - a. *the Defendant had no belief that it was necessary in self defence for him to do what he did, or*
  - b. *there were no reasonable grounds for that belief.*
- f) *in regard to child discipline that:*
  - a. *the Defendant was not a parent or a person in place of parent; or*
  - b. *the action of the Defendant was not reasonable in manner or warranted in all the circumstances; or*
  - c. *the force applied was not used by way of correction.*

The Defence may cast doubt on whether any physical contact occurred, or if it is admitted or proven that physical contact did occur, the Defendant must establish the basis for a defence that the contact was *authorised or justified or excused by law*. In the context of this case possible lawful excuses include:

1. self defence s248
2. lawful correction of a child s257

# Criminal Procedure Regulations 2005

## PROSECUTION NOTICE

<b>Western Australia Criminal Procedure Act 2004 Magistrates Court at Fremantle No: 1097 of 2014</b>		<b>Prosecution Notice</b>	
<b>Details of alleged offence <sup>1</sup></b>	<b>Accused</b>	Francis Peter	
	<b>Date or Period</b>	27 January 2014	
	<b>Place</b>	Fremantle	
	<b>Description</b>	assaulted a child under the age of 18 years Charles Jones (D.O.B. 2 February 2004)	
	<b>Written Law</b>	Section 313 of the <i>Criminal Code</i> (WA)	
<b>Notice to Accused</b>	<b>You are charged with the offence described above, or the offences described in any attachment to this notice. The charge(s) will be dealt with by the above Court.</b>		
<b>Accused's Details <sup>2</sup></b>	<b>Date of Birth</b>	1 April 1983	<b>Male/Female</b> Male
<b>Prosecutor <sup>3</sup></b>	<b>Address</b>	27 Brady Street, White Gum Valley WA	
<b>Person issuing this notice <sup>4</sup></b>	<b>Full name</b>	Snr Sergeant Vera Bradley	
	<b>Official title</b>	Senior Sergeant	
	<b>Work address</b>	Fremantle Police Station, 60 Henderson Street, Fremantle	
	<b>Work telephone</b>	(08) 9264 7521	
	<b>Signature</b>	<i>V<sup>a</sup> Bradley</i>	
	<b>Witness's Signature<sup>4</sup></b>	<i>J C More</i> JP/Prescribed court officer	
<b>Date</b>	<b>This prosecution notice is signed on</b> 27 January 2014		

## WESTERN AUSTRALIAN POLICE

**Statement in the matter:**  
**Police v Francis**  
**Common Assault**

**Place: Fremantle**  
**Police Station**  
**Date: 29.1.2014**

My name is **Vera Bradley**, Senior Sergeant with the WA Police stationed at Fremantle.

1. I am 37 years of age and I have been stationed at Fremantle for five years.
2. On 27 January 2014, I was patrolling the main street of Fremantle during the Annual Historic Exhibition at about half past twelve noon. Actually, I was watching a mock flogging which was being performed by the Historical Society just outside the Town Hall.
3. Someone touched me on the shoulder. I turned around and saw Nick Parker who was dressed in period costume with a large badge on his hat. The badge was emblazoned with the word "Official" in old fashioned script. He appeared to be very agitated.
4. He said: *"They are at it again. This time you must do something. I saw the poor tyke being belted in broad daylight. Quickly, follow me"*.
5. Although I was a bit startled, I followed Parker, whom I have known for many years, through the crowd and into the food stall area.
6. Parker led me to an area near some shops where there are bench style seats and stopped me by grabbing my arm. He pointed to three individuals who were seated on a bench about 3 metres from me.
7. He said: *"There is the beast"* and proceeded to inform me that the person seated on the left hand side of the bench had struck the young boy who



was standing between that person and another person who was seated on the right hand side of the bench. I saw that the person on the left was Peter Francis and the other adult was his wife, with young Charles Jones standing between them crying his eyes out.

8. I knew them all by sight as regular visitors to the area and Charles (whom I know as Charlie) goes to the same school as my kids. He has played in my back yard on occasions. I would say that he is about 10 years old.
9. I noticed that Peter Francis had a large smear of ice cream on his left arm and that there was a flattened ice-cream cone at Charlie's feet. He was crying with his mouth wide open and was rubbing his leg which had a large red mark on it.
10. I said: *"What's going on here Peter?"*
11. Peter said: *"This is none of your business. This is a family affair."*
12. Peter then said: *"It's no business of yours either 'Nosey Parker'."* This last remark was directed over my shoulder to Parker who responded by complaining that the police were ignoring Child Abuse and that the matter would be reported to what he called 'High Authority.'
13. I said: *"Peter, this person claims you belted Charlie. What have you got to say?"*  
  
He said: *"To you nothing."*
14. I turned to his wife and said: *"Do you want to tell me anything?"* She made no reply.
15. I then arrested the Defendant who was later charged with common assault.

## WESTERN AUSTRALIAN POLICE

<b>Statement in the matter of:</b>	<b>Place: Fremantle</b>
<b>Police v Francis</b>	<b>Police Station</b>
<b>Common Assault</b>	<b>Date: 30.1.2014</b>

My name is **Nick Parker** of Heritage Row, Fremantle, Antique Dealer.

1. I am 67 years old and I have had a shop in Fremantle for the past 25 years.
2. I have known the Defendant Peter Francis for about 5 years, ever since he came to work in Fremantle. I have known young Charlie all of his life.
3. I even knew his late father. He was a great person, tragically taken from us too soon. But I digress. I'm sorry, I'll try to stick to the point.
4. I remember the day of the Historic Exhibition quite well. I was an official you see, I really enjoy getting involved in the community. It was a great success with people everywhere.
5. Just before lunchtime, I was standing outside the ice cream shop watching the crowd when I saw young Charlie standing between his mother and the Defendant who is his step father.
6. I remember thinking that I was surprised to see them back together again after that business with the hairdresser. But again, I digress.
7. Anyway, I heard a sharp sound and noticed that Charlie was crying and holding his leg. He was wearing shorts. It was a hot day.
8. I saw the Defendant grin and heard him say in a threatening voice: *"Now, let's see you do that again, you little shit."*

9. Well, I was really boiling. I have heard of wicked stepfathers before but this took the cake. I ran to the Town Hall knowing that Sergeant Bradley would be watching the flogging – she can't resist it.
10. I grabbed her and took her back to Charlie who was still in the same spot and I got a mouthful of abuse from the Defendant for my pains.
11. The poor child was still crying and rubbing a great red mark on his leg.
12. His mother was sitting there like a great lump. Too ashamed to say anything I suppose. I knew no good would come of that marriage.
13. I've heard that the Defendant started to belt both of them within 6 months of their wedding. They got married in April last year.
14. I know some call me 'Nosey Parker' but I've no regrets. Child abuse is despicable. When I saw that red mark on Charlie's leg I knew the rumours I'd heard about the Defendant were true.

## STATEMENT OF PETER FRANCIS

My name is Peter Francis, aged 25, Ice Cream Vendor. I live at 24 Bullock Row, White Gum Valley with my wife and my stepson Charles.

1. On the day I got charged I was living at Coogee with my uncle Cyrus. My wife and I were having a bit of trouble at the time and so we were having what they call a "trial separation".
2. We had some problems. She is 14 years older than me and I wasn't used to being a parent. It is not as easy as people think, especially with a child like Charlie who is used to getting everything he wants - like a little prince. His father died when he was 7 years old and my wife has spoiled him to compensate.
3. On the day of the Historical Exhibition I met my wife at Fremantle to have a family day out.
4. It started out fine but nothing I did was good enough for Charlie. All he did was moan and complain and make it difficult for me to talk to his mother. I've tried to build a friendship with him but I think he wants his mother to himself.
5. He wanted an ice cream from the shop where I work. I got him the flavour he asked for but when I gave it to him he decided he didn't want it; he wanted a different flavour.
6. I let him know he wouldn't get another one until he ate that one.
7. He said: *"If I drop it I won't have to eat it 'cause it'll have germs."* He then started to tilt the cone until there was ice cream dripping on the ground.
8. Sure enough the whole scoop fell onto the ground. At the same time he started crying and screaming

and moved his other arm towards me. I thought he was going to hit me.

9. All this time, his mother was sitting right there reading a magazine, pretending not to notice anything. So she wouldn't have to take sides.
10. I smacked Charlie on the leg. Not hard. I said that he was being naughty and that he shouldn't do that again.
11. Just then I noticed that busybody Parker, 'Nosey Parker' we call him, telling Sergeant Bradley to do something to me as if I were a criminal or something.
12. I then told them both to mind their own business but Sergeant Bradley arrested me.
13. All I did was to tell the kid off to stop him misbehaving and to stop him hitting me. I am his stepfather. I'm entitled to discipline him.
14. We are all living together now; a happy family. Every family has its ups and downs.

## STATEMENT OF LANA FRANCIS

My name is Lana Francis. I live at 24 Bullock Row, White Gum Valley.

1. At the moment I live with my second husband Peter and my son Charlie. My first husband (Charlie's dad) died a few years ago.
2. I married Peter a bit over a year ago. A few months after the marriage, we separated for a while because of various problems, which I would rather not mention. The fact that I am considerably older than my husband and have a child, whom I admit I have spoiled since his father died caused more problems than I anticipated.
3. However, we wanted the marriage to work. My counsellor had told me Peter could be a good father but needed to get to know Charlie better. So in January we arranged to meet at the Historical Exhibition for a 'family day out.'
4. I tried to give Charlie and Peter some time together so that they could work out a way of relating to each other. How else were we ever going to get back together?
5. I heard them talking about ice-cream.
6. I sat down on a bench outside the shop and read a magazine.
7. I didn't see Peter do anything to Charlie, but I heard Charlie start crying and when I looked up saw him rubbing his leg.
8. I heard Peter say something like: *"You're being naughty. You won't do that again. That is a shitty thing to do."*
9. I saw Mr Parker pushing through the crowd. Charlie's Dad knew him and often said that he was

a real busybody, always acting like he was the morals police of the Fremantle Mall.

10. He was pulling Sergeant Bradley behind him and they came right up to us. They said something to either Peter or me but I was embarrassed because Charlie was quite loud. I just hid my head.
11. Charlie can be a difficult child.
12. I would have done the same thing in the circumstances. We have discussed the event at home.
13. We have all been living together for a few months now. We're really trying to make a go of it. This business hasn't made it any easier.
14. Anyway, this is just an episode we have put behind us. Peter is even going to adopt Charlie next year.