Heijne v The State of Western Australia **[2010] WASCA 86 (11 May 2010) – Supreme Court of Western Australia (Court of Appeal)**

'Intention' – 'Motive' – 'Murder' – 'People who are gay, lesbian, bisexual, transgender, intersex and queer' – 'Physical violence and harm' – 'Self-defence'

Charge/s: Murder.

Appeal type: Appeal against conviction.

Facts: The male appellant and the male deceased had been in an intimate personal relationship for nearly 25 years. The prosecution case was that this relationship deteriorated particularly because of the development of a relationship between the appellant and a younger man (Mr X). The prosecution argued that the appellant strangled the deceased. The defence case was that the evidence did not exclude that the deceased died of a heart attack not strangulation. The defence further asserted that the State failed to prove the appellant had a motive to kill or intention to kill the deceased. The defence also relied on self-defence against an unprovoked assault. The appellant asserted that the deceased struck his face with the back of his right hand before the strangulation occurred.

Issue/s:

1. Whether there was material on which the jury acting reasonably could fail to be satisfied that the prosecution had excluded the application of self-defence against unprovoked assault.
2. There was insufficient evidence to enable the jury to be satisfied beyond reasonable doubt that the appellant intended to cause some form of injury, of whatever kind, falling within the definition of grievous bodily harm.
3. The trial judge erred in directing the jury as to causation.
4. The trial judge gave inadequate directions with respect to the intent necessary to sustain a charge of murder.

Decision and Reasoning: The appeal was dismissed. First, there was no basis in the evidence for the jury to have entertained the possibility that the appellant reasonably apprehended that he faced death or grievous bodily harm. Assaults committed by the deceased on the appellant in the past were not of a kind to cause apprehension of death or grievous bodily harm, and the deceased striking the appellant with the back of his hand would similarly not be of a kind to cause such fear (See [44]-[49]). Further, the jury could not have entertained the possibility that the only practical means of averting the threat was through application of force to the deceased's throat. Other options open to the appellant included brushing the deceased off or punching him in the head (See [50]).

Second, there was ample evidence sustaining the inference that the appellant intended to cause some form of injury within the definition of grievous bodily harm. This included the pathological evidence given in relation to the extent of the deceased's injuries, the evidence of animosity in the relationship, the appellant's description of the struggle preceding the killing, the appellant's evidence that when he realised the deceased was dead he thought he must have strangled him, the appellant's conduct before and after the killing, the appellant's admissions to Mr X and another man, and a witness's evidence of lies told by the appellant (See [71]).

Third, the trial judge did not err in his approach to the issue of causation in his direction to the jury. He reminded the jury of the most pertinent evidence on the subject and clearly identified the issue they had to resolve and the manner in which they should resolve it (See [81]-[85]).

Finally, the trial judge specifically referred the jury to all the evidence that was relevant to the intent of the appellant at the time of the death. The evidence was relevant to both the question of intent required to sustain the charge of wilful murder, and the intent required to sustain the charge of murder. The difference between those two intentions was made abundantly clear to the jury (See [106]-[107]).

Note: the High Court refused special leave to appeal (see *Hellings v The Queen* [2005] HCATrans 255 (27 April 2005)).