

***Fernando v Firth* [2017] NTSC 67 (25 August 2017) – Northern Territory Supreme Court**

‘Breach domestic violence order’ – ‘Particularise breach’ – ‘Post-separation violence’ – ‘Procedural fairness’ – ‘Threats’

Charges: Contravention of domestic violence order x 1; aggravated unlawful assault x 1.

Appeal type: Appeal against conviction.

Facts: The appellant and complainant were in a relationship for approximately 15 years. The offences occurred after the relationship ended ([10]). The appellant allegedly threatened to kill the complainant if she found another partner ([11]). At trial, the prosecutor did not particularise the words spoken by the appellant ([7]). The appellant denied threatening to kill her, but admitted to threatening to punch the complainant if she came near him, and telling her to stay away from him. The Magistrate accepted the defendant’s evidence, and convicted him of the charge on that basis ([32]).

Issues: Whether the verdict was unsafe and unsatisfactory.

Decision and Reasoning: The appeal was allowed. The Magistrate convicted the defendant based on his admissions, which evinced less serious conduct than the threats alleged by the prosecution ([49]). The charge required the complainant to have a ‘reasonable apprehension of violence’ ([50]). Since the prosecution did not specify the particular words used, held that the Magistrate did not accord the defendant procedural fairness by going outside the prosecution case ([49]).