

IN THE HIGH COURT OF THE COOK ISLANDS

HELD AT RAROTONGA

(CIVIL DIVISION)

CR NO. 327/98

POLICE

V

DAVID CRIGHTON

Defendant

Mr Elikana for Police

Mr Crighton for himself.

Date: 26 November 1999

**DECISION OF GREIG J**

Mr Crighton is facing a charge that on the 16<sup>th</sup> day of August 1998 he did assault Mr Mataa at or about his home in Rarotonga. I have to decide on the law and on the facts before me whether on this particular day there was an assault and secondly, whether that assault may be justified under the defence of self defence.

Mr Crighton has appeared for himself. He is not a lawyer. I have allowed him a good deal of special permission to introduce evidence and to say things which would normally not be admissible. It has helped me however to understand the background of this matter. The background is truly a sad case. It is a family dispute which arises out of the succession to and the ownership and occupation of a family home. For some 7 years before the events and Mr Crighton's appearance in this Court the complainant and Mr Crighton and his family have been living in the same house. The house has been divided so that the complainant lives separately but there has been a great deal of conflict and differences between the two families. It has meant over the period that I speak of, that the complainant has on at least four occasions been before the Court on charges of assaulting Mr Crighton and in addition to these matters there have been some six occasions on which Mr Crighton has made complaints to the Police about the complainant. These were investigated by the Police from time to

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time but have not resulted in any proceedings because the Police have felt they were simply domestic disputes and were not occasions that required Police attention. As far as I am aware, this is the first time on which Mr Crighton has been the subject of a complaint and has been brought before the Court.

On the day in question which was a Sunday in the afternoon the complainant had been out and come back to his home and had lain down for a sleep. Mr Crighton's children were playing in the next room. They were making some noise. The noise appeared to have irritated the complainant and he told the children in clear terms that they were to be quiet. It is suggested by Mr Crighton that the complainant was bellowing and clearly I think he was making it known without any doubt to the children that they were to be quiet. Mr Crighton came through to the room and there was some exchange then between Mr Crighton and the complainant and some swearing and foul language issued from the complainant. Mr Crighton says, and I accept that he has put up with a great deal of abuse, swear words and other means of treatment and perhaps otherwise at the hands of the complainant, his brother in law. On this day he decided as he said himself, that he was going to stand for it, he was going to make a stand for his family. He said that he had to face his brother in law and find out why he was so aggressive to his family. His decision was then to leave the inside of the house and go around to the outside of the brother in law's bedroom. He picked up what was described as a stick, but which I would call a baton, which is a heavy wooden stick and it had a leather thong which can be wound around the wrist to give it extra security. It can be described as a weapon. Mr Crighton went around to the outside of the complainant's bedroom holding it in his left hand. There was then a further exchange of oral abuse. I am satisfied that the worse of this came from the complainant. He claimed in his evidence that he was in fact a man of peace, but in relation to his brother in law Mr Crighton and perhaps others in his family, I reject that. Mr Crighton did not go away, he stayed there. He responded to some of the abuse.

The complainant's bedroom has three louvre windows, two of those were open or partly open, the other near to the door was closed. During the altercation between the

two men Mr Crighton put his right arm on the outside of the window ledge to provide a barrier against the lower louver that prevented the louvres from being opened from the inside. At this stage the complainant who was still inside his bedroom was attempting to reach Mr Crighton. The complainant tried to open the louver but could not do so on the first attempt or so but then managed to do so by handling one of the louvres and it appears, breaking it. He then seized Mr Crighton's arm and Mr Crighton then hit him on the arm with the baton. With the second blow he smashed all but two of the rest of the louvres in that window but it took further blows with that baton to have Mr Mataa release the defendant's arm. Mr Crighton did not then immediately withdraw but the baton was seized by Mr Mataa, there was then a struggle, the baton came free. Again, Mr Crighton did not immediately withdraw or fall back. He was again seized around the shoulders and then a further struggle which Mr Crighton finally released himself. At this later stage the two children had come around outside the house and were encouraging their father to leave and to come away, he finally did so. In the altercation Mr Mataa suffered a number of superficial injuries to his arm to his hand and to his feet. He was taken to hospital, the wound attended to and he was released. There was no lasting harm and as I said the injuries were superficial.

An assault as defined in the Crimes Act "is the act of intentionally applying force to the person of another directly or indirectly." There is no doubt that Mr Crighton applied the baton deliberately with force and I am satisfied that there was an assault. The real question in this case is whether the assault can be justified on the grounds of self defence.

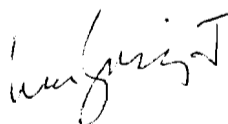
It was suggested by Mr Crighton that he was entitled under S53 of the Crimes Act to act as he did in defence of his children being under his protection against the assault. The defence there requires that, there be an assault against the children. I am not satisfied in the circumstances that, what occurred amounted to an assault on the children. But in any event what occurred in respect of the children was all finished before this assault on Mr Mataa.

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Now there is in the Cook Islands legislation two categories for self defence, where there is an unprovoked assault or a provoked assault. For Mr Crighton to fall within the first part of that he would have to satisfy me that the assault by Mr Mataa against him was unprovoked. Technically, it might be that Mr Mataa's conduct even within the room, did amount to an assault because there was some attempt to apply force. There was some threatening proceedings which might have caused Mr Crighton some concern but of course he was outside the window and it was Mr Crighton's continued behaviour which caused the escalation of the event and which caused the incident to occur. At best, Mr Crighton can only show a provoked assault to which he responded but in that case he has to avoid any further conflict and to fall back from the place of assault which may be taking place. I am not satisfied this is what happened. This was a challenge. Mr Crighton was armed with a weapon. He confronted the complainant and continued the confrontation. He may have misjudged the events but he assaulted his brother in law and without grounds for which he can be excused by self defence. In the result then the accused must be found guilty of the assault.

**SENTENCE**

Although this was a minor assault, it was an assault which was not justified under law but it was clearly an assault which arose over a long period of abuse and provocation which caused Mr Crighton to lose his cool in the situation which arose. What he did was take the law into his own hands. Unfortunately the situation that these parties are in is not one that can be solved by Police. They are not a family dispute resolution service. They are there to see that the law is obeyed and apply to the country if it is broken. This Court is not in this case able to deal with a matter of family dispute. It is very sad that these grown up members of a family, have been unable to resolve their differences one way or another. I would have thought there would be services available through the Church or other organisations which might assist the parties. In the circumstances then although not excused, by law what Mr Crighton did is something that can be explained and might well be excused, not perhaps according to the christian belief, but according to normal behaviour in human kind. I don't think it is necessary to impose any penalty on Mr Crighton. Mr Crighton will be convicted and discharged but with no further penalty.



**JUDGE**