

***McElholum v Hughes* [2015] ACTSC 78 (24 April 2015) – Australian Capital Territory Supreme Court**

‘Assault’ – ‘Family law proceedings’ – ‘Legal representation’ – ‘Physical violence and harm’ – ‘Safety and protection of victim and witnesses’ – ‘Systems abuse’

Charge/s: Assault.

Appeal type: Appeal against conviction and sentence.

Facts: The appellant and his former partner had commenced family law proceedings relating to parenting orders for their son. The appellant, a solicitor, was self-represented while his former partner (the complainant) was represented by a firm of solicitors and a barrister. While at the Federal Magistrates Court, the appellant knocked on the interview door where his former partner and her counsel (the solicitor, barrister and a law clerk) were conferring. He asked if they had considered his proposal. When he was told they would be another 10-15 minutes, the appellant replied ‘that’s not good enough’. The barrister attempted to close the door with her left wrist but the appellant forced it open and said, ‘who are you?’ in a raised voice. The barrister called security. 30 minutes later she complained of pain in her wrist. The appellant was charged with assault and pleaded not guilty. The magistrate found the charge proved and fined the appellant \$100 and ordered the appellant to pay costs of \$69, a criminal levy of \$50 and a victim’s service levy of \$10.

Issue/s: The appellant appealed against his conviction and sentence. The notice of appeal was nearly 70 pages long and contained many convoluted and repetitive grounds of appeal. Two relevant grounds were:

- > The evidence of the witnesses called by the prosecution was tainted by interest or was perjured (appeal against conviction).
- > The magistrate erred in placing significance on the location of the assault namely, the court building (appeal against sentence).

Decision and Reasoning: The appeal against conviction and the appeal against sentence were dismissed. First, one of the grounds in relation to the appeal against conviction was that the evidence given by the barrister, the solicitor, the law clerk and his former partner was tainted because they all had an ulterior motive i.e. to gain advantage in the family law proceedings. Refshauge J held that there was no evidence to support this allegation and stated, ‘the incident was reported to a security officer of the Commonwealth Law Courts promptly, the evidence of the various parties was not identical, usually a matter indicative of truth, because identical recollections of different witnesses, especially as to inessential facts, is often an indication of concoction and it is not explained what benefit [his former partner] would obtain from such a device’. Further, the allegation that the witnesses perjured themselves was unsustainable. The evidence given was corroborated by the CCTV footage and by the evidence of the other parties(See [301]-[323]).

Second, in relation to the appeal against sentence, the magistrate did not err in placing significance on the fact that the assault took place in a court building. Refshauge J stated, ‘while [the appellant] certainly possessed the right to be within the bounds of the court precinct, this is not an unlimited right and does not give him the right to assault other people. A court precinct is a place where people should be able to expect the law to be observed at all times’. Further, His Honour quoted from *Grimshaw and Mann* [2013] ACTSC 189, ‘intermediate Courts of Appeal have regularly referred to the fact that violent offences committed in public are more serious’. However, this was not to state that assaults occurring in a private home are not serious (See [372]-[377]).

Note: this case was affirmed on appeal (see *McElholum v Hughes* [2016] ACTCA 37 (29 September 2016)).