

***Ussher-Clarke v The Queen* [2018] NSWCCA 61 (13 April 2018) – New South Wales Court of Criminal Appeal**

‘Factors affecting risk’ – ‘Impact on consent and disclosure’ – ‘Pregnancy’ – ‘Systems abuse’ – ‘Women’

Charges: Recklessly cause grievous bodily harm x 1; Intending to procure a witness to give false evidence x 1.

Appeal type: Application for leave to appeal against conviction.

Facts: The appellant kicked his partner, the complainant, in the abdomen. The complainant was 12 weeks pregnant, and she miscarried the following morning ([10]). There were conflicting opinions given by experts as to the likelihood that the kick could have caused the miscarriage (see [17]-[44]).

The complainant gave statements to the police immediately after the incident indicating that the appellant had kicked her. In the weeks after the incident, the appellant made a number of phone calls to the complainant to encourage her to lie to the police. In a subsequent statement and in her evidence at trial, the complainant claimed that the appellant had not assaulted her ([8]).

The appellant pleaded guilty to the charge in relation to influencing a witness. The applicant was convicted of the recklessly cause grievous bodily harm charge and was sentenced to a head sentence of 5 years and 6 months with a non-parole period of 4 years.

Issues: Whether the conviction was unreasonable and unable to be supported by the evidence.

Decision and Reasoning: Leave to appeal was refused. The Court discussed the principles governing granting leave to appeal against conviction ([59]-[60]). The Court noted that the Crown had to prove that the kick was a significant cause of the miscarriage, not that it was the sole cause ([60]-[61]). The Court concluded that it was open to the jury to accept the experts’ evidence, while conflicting, as supporting the conclusion that the kick caused the miscarriage ([89]).