

***R v M* [2001] QCA 166 (1 May 2001) – Queensland Court of Appeal**

‘Assault’ – ‘Assault occasioning bodily harm’ – ‘Breach of domestic violence order’ – ‘Burglary’ – ‘Circumstantial evidence’ – ‘Deprivation of liberty’ – ‘Directions and warnings for/to jury’ – ‘Evidence’ – ‘Indecent assault’ – ‘Intent’ – ‘Physical violence and harm’ – ‘Rape’ – ‘Sentencing’ – ‘Separation’ – ‘Sexual and reproductive abuse’

Charge/s: Burglary, rape, assault occasioning bodily harm, deprivation of liberty, two counts of aggravated indecent assault and assault.

Appeal Type: Appeal against conviction and sentence.

Facts: One week prior to the offences the victim had removed her former partner’s name from their joint lease, terminating his right to enter. He (the appellant) then broke into the victim’s house, after cutting the telephone wires. He then pulled her into the bedroom, punched her, tied her up and forced her to perform oral sex on him at knife point on two separate occasions. He waved his knife at her and said that if the police were called, he would cut off her breasts and have anal sex with her. He then raped her. The appellant was the subject of a domestic violence order obtained by the complainant a month before the offences were committed. He was sentenced to 9 years’ imprisonment.

Issue/s:

1. Whether the sentence was manifestly excessive.
2. Whether the trial judge erred in allowing the jury to infer that it was the appellant who cut the telephone lines.
3. Whether the trial judge erred by failing to direct the jury that they needed to be satisfied that the appellant cut the phone lines beyond reasonable doubt.
4. Whether evidence of a domestic violence order being in place could be a relevant factor in determining whether the appellant had the requisite intent to commit an offence when he entered the house.
5. Whether the appellant could rely on the defence of an honest and mistaken belief for the purposes of consent.

Decision and Reasoning:

1. McPherson JA noted that a sentence of less than seven years could not have been expected – the appellant had a substantial history of domestic violence (including against the complainant’s mother) and breaches of these orders.
2. McPherson JA held that the judge was correct in allowing the jury to infer that the appellant had caused the damage. There was uncontradicted circumstantial evidence to this effect.

3. This argument was dismissed. Only each element of the offence needs to be proven beyond reasonable doubt, not every piece of circumstantial evidence.
4. The Court held that evidence of a domestic violence order being in place could be a relevant factor for the jury to determine intent for the purposes of the burglary charge.
5. This argument was dismissed. In fact, the trial judge had omitted the requirement of a 'reasonable' belief, which was favourable to the appellant.