

***R v Davidson* [2014] QCA 348 (19 December 2014) – Queensland Court of Appeal**

‘Assault occasioning bodily harm’ – ‘Grievous bodily harm’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Victim credibility’

Charge/s: Assault occasioning bodily harm, grievous bodily harm.

Appeal Type: Appeal against conviction and sentence.

Facts: The offending involved an incident where the appellant asked the complainant to perform a sexual act on his male friend. The appellant also engaged in sexual activity with the friend. The case at trial was based on the complainant’s version of events, which included that the appellant kicked and punched the complainant (the appellant’s partner) for a long period. There was a history of domestic violence in the relationship. A domestic violence order was made some six years prior. The appellant had a long criminal history of similar offences, including a breach of a domestic violence order. However, there was no associated breach of a domestic violence order in this matter. The appellant was sentenced to five years imprisonment with parole eligibility set at 2.5 years.

Issue/s: Whether the failure to call new evidence from witnesses who challenged the complainant’s credibility established a miscarriage of justice.

Decision and Reasoning: The appeal was dismissed. The appellant contended specifically that the failure to call a particular witness established a miscarriage of justice and noted that his defence counsel did not explore the detail of the evidence in cross-examination. The Court rejected that argument – the failure of counsel to adduce this new evidence was justifiable as a strategic decision in the trial context to not risk other unfavourable evidence being admitted. The appeal against sentence was also dismissed.