

***Koay v Police* [2015] SASC 158 (7 October 2015) – South Australia Supreme Court**

‘Aggravated assault’ – ‘alleged prior violence’ – ‘Evidence’ – ‘Physical violence and harm’ – ‘Relationship evidence’

Charge/s: Aggravated assault.

Appeal Type: Appeal against conviction

Facts: The appellant, a woman, and the complainant, a man, met in 2011 and married in 2012. The appellant was on a spousal visa. The complainant’s version of events involved the appellant coming into his bedroom at night when he was trying to sleep. He asked her to leave the room multiple times but she did not. He recorded some of the incident on his phone (and the recording was admitted in evidence). As they were grappling with a light switch, he claimed that the appellant punched and scratched him. He attempted to block the punches. He asked her to stop punching him. He suffered minor injuries. At trial, the appellant claimed that she acted in self-defence. She claimed that she was scared of him because he had previously been violent towards her, and that the reason for going into his bedroom was to discuss her visa.

Issue/s: Whether the Magistrate erred by rejecting her claim of self-defence without the proper analysis required by s 15 of the *Criminal Law Consolidation Act 1935*.

Decision and Reasoning: The appeal was dismissed. The appellant submitted that rather than restricting himself to the events on the night, the Magistrate should have considered the evidence of alleged prior violence by the complainant to place context around the incident. The Magistrate noted that the appellant’s claim that she was scared of the complainant lacked credibility, as she decided to enter his room in the middle of the night, notwithstanding his requests that she leave. The Magistrate found it difficult to accept her reason for going into the room (to discuss the visa) and also difficult to accept that the middle of the night was the most convenient time to do so. He described the appellant’s evidence of self-defence as vague. It did not explain how the conduct was reasonable for her own defence. Vanstone J accepted the Magistrate’s conclusions – the appellant made no attempt to directly address the elements required for self-defence in her evidence and she did not explain why, despite the complainant’s requests, she did not leave the room. Vanstone J also held that the Magistrate was correct not to rely on the evidence of alleged prior violence inflicted by the complainant because it was not ‘fleshed out in detail’ (see at [18]) and there was nothing in this evidence which was relevant to the incident on the night.