

***R v Ross* [2015] ACTSC 22 (1 July 2015) – Australian Capital Territory Supreme Court**

‘Assault’ – ‘Bail’ – ‘Burglary’ – ‘Choking’ – ‘Exceptional circumstances’ – ‘Physical violence and harm’ – ‘Risk factor- strangulation’

Charges: Assault occasioning actual bodily harm, burglary and choking a person so as to render them insensible or unconscious

Proceeding: Bail

Facts: While on bail for previous offending, the accused allegedly entered his ex-partner’s (the victim) home and attacked her, placing his hand around her neck and squeezing until she felt light headed. At the time these offences were committed, the accused was subject to a protection order in favour of the victim. The breach of this order was a serious offence for the purposes of the *Bail Act 1992* (ACT) (the Act) and therefore the presumption against bail did not apply to the accused. In order for bail to be granted, the court must have been satisfied that there were special and exceptional circumstances favouring the grant of bail under s 9D(2) of the Act.

Issue: Whether bail should be granted.

Decision and reasoning: Bail was not granted. The charge of contravening a protection order was ultimately withdrawn because of procedural issues relating to service. However, s 9D of the Act still applies where a person is on bail for a serious offence of which offence that person is acquitted. Therefore, the fact that the charge was withdrawn did not amount to special and exceptional circumstances in favour of granting bail. The accused allegedly committed very serious offences of family violence. He had a history of offending, having previously been convicted of two offences of assault occasioning actual bodily harm, four offences of assault, two offences of contravention of a protection order, numerous traffic offences including drink-driving offences and five offences of failing to appear in accordance with a bail undertaking. He had also shown an unwillingness to obey and disrespect of court orders. Given the accused’s history and the real risk that he would not attend trial and reoffend, bail should not have been granted even if there were special and exceptional circumstances in favour of granting bail.