

## ***Davis v Stephens* [2019] ACTSC 271 (1 October 2019) – Australian Capital Territory Supreme Court**

‘Appeal against conviction and sentence’ – ‘Female perpetrator’ – ‘Jealous behaviours’ – ‘Physical violence and harm’ – ‘Separation’ – ‘Victims who are (alleged) perpetrators’

Offences: Common assault x 2; Assault occasioning actual bodily harm x 1

Proceedings: Appeal against conviction and sentence

Facts: The female appellant and male victim had been in a relationship for about two years (which was ‘volatile’ and ‘they tended to be jealous’ of each other and had numerous ‘fights’) but they had broken up the day before the offending and the appellant had moved out. Early in the morning of the offending, the appellant entered the front door and started punching the victim in the head. The appellant saw another woman on the couch and started moving towards her, so the victim grabbed the appellant’s arm. The appellant bit the victim’s arm hard and grabbed his testicles. She then chased after the other woman before taking the victim’s phone, leaving the house and knocking over the victim’s motorcycle. The appellant was convicted and sentenced to a 12-month Good Behaviour Order. She appealed her conviction on the following grounds:

1. The Magistrate erred by not properly directing herself to the law of self-defence in terms of both personal self-defence and self-defence of property, and/or
2. The Magistrate erred by returning inconsistent verdicts by dismissing charges of Damage to property but returning verdicts of guilty on the other charges in circumstances where the evidence was substantially the same between the counts. That error was compounded because the verdict of not guilty should have caused reasonable doubt in relation to the other counts.

Judgment: The judge dismissed the appeal. His Honour found that the Magistrate accepted the evidence of the victim (the victim grabbed the appellant’s arm to stop the appellant coming further into the house, not to prevent her from retreating out of the house) and, as such, the basis for self-defence fell away [76].

Regarding Ground 2, his Honour held that “the bare fact of there being a guilty verdict in relation to some charges arising from a course of events and an acquittal in relation to one or more charges arising from the same course of events is not enough to establish that the guilty verdicts must be unreasonable. It is necessary for the appellant to demonstrate that the different outcomes cannot stand together as a matter of logic and common sense” [79]. His Honour found that the Magistrate was correct in distinguishing the verdicts in relation to events that occurred inside the house from those which occurred outside the house [82].

His Honour further held that the sentence imposed fell within the range of appropriate outcomes and was not excessive, let alone "manifestly excessive" [84].