

***R v Green (no. 3)* [2019] ACTSC 96 (11 April 2019) – Australian Capital Territory Supreme Court**

‘Directed acquittal application’ – ‘Evidence’ – ‘Physical violence and harm’ – ‘Statutory interpretation’ – ‘Strangulation’ – ‘Women’

Charges: Choking, suffocating or strangling a person x 2.

Proceeding type: No-case submission/Directed acquittal application.

Facts: The accused was charged with two counts of choking, suffocating or strangling his mother while in an argument. While the mother claimed that the accused strangled her in her initial accounts of the incident, she eventually recanted her allegations claiming she had fictionalised them while angry with the accused.

Issues: The proceedings focused on the questions of whether the words ‘chokes’ ‘suffocates’ and ‘strangles’ in s 28(2) of the *Crimes Act* 1900 should be interpreted with respect to their effects on the victim’s breathing and consequently whether the correct interpretations of these words warrant upholding the accused’s no-case submission.

Decision and reasoning: Although choking, suffocating or strangling is an offence under s 28(2), the terms are not defined within the legislation and prior to these proceedings were yet to receive judicial consideration in the ACT. Loukas-Karlsson J provided, in comparing s 28(2) of the *Crimes Act* to the corresponding offences in other jurisdictions, that the intention behind the provision may have been to build on the ACT’s existing offences which contain the elements of ‘choke, strangle or suffocate’ in an attempt to ‘lower the threshold of conduct to capture a broader range of conduct, particularly in the domestic violence setting’ [34]. Upon considering this intention along with the elements’ statutory context, ‘authoritative’ definitions from the *Macquarie Dictionary* and extrinsic material (such as the Explanatory Statement) Loukas-Karlsson J concluded that ‘the relevant element is constituted by the stopping of the breath’ [46].

In considering the accused’s directed acquittal application, Loukas-Karlsson J provided that “a verdict of not guilty may be directed only if there is a defect in the evidence such that, taken at its highest, it will not sustain a verdict of guilty” (*Doney v The Queen* [1990] HCA 51) [84]. Since the accused did not stop the victim’s breath on either attempt, his conduct failed to satisfy the necessary element. His Honour therefore concluded that there was a defect in the evidence such that a verdict of not guilty must be directed.