***Taylor v R* [2020] NSWCCA 355 (20 December 2020) – New South Wales Court of Criminal Appeal**

'Animal abuse' – 'Application for leave to appeal against conviction' – 'Past domestic and family violence' – 'Significant probative value' – 'Tendency evidence'

Charges: Breaking and entering into dwelling and committing serious indictable offence, namely, intimidation with intent of causing fear of physical or mental harm, knowing that persons were inside x 1 (Count 4); Intimidation with intent of causing fear of physical or mental harm x 1 (Count 6); Possession of an implement of housebreaking without lawful excuse x 1 (Count 8); Entering dwelling with intent to commit serious indictable offence, namely, intimidation with intent of causing fear of physical or mental harm, knowing that persons were inside x 1 (Count 9).

Proceedings: Application for leave to appeal against conviction.

Facts: The applicant man and the complainant woman were in an on-off relationship for about two years prior to the alleged offences. Following a trial by jury in the District Court of New South Wales, the applicant was found not guilty on Counts 1-3, but guilty on Counts 4, 6, 8, 9, 11 and 12.

In relation to Count 9, the Crown's case required the applicant to have gained external access to the complainant's fourth floor apartment of a five storey building, despite there being no means for the applicant to access the balcony externally.

In relation to Counts 1-10, the Crown relied on tendency evidence, namely, a signed statement of agreed facts from 2010 used in sentencing the applicant for a charge of recklessly occasioning grievous bodily harm to his former wife on 25 October 2008. The facts concerned acts of violence and threats towards his former wife of 30 years, and their pet, during the breakdown of the relationship. The signed statement of agreed facts also included a statement that there was a history of domestic violence in the relationship.

Grounds of appeal:

1. The verdict on Count 9 was unreasonable as there was no direct evidence, or no proper inference from direct evidence, that there were persons in the premises at the time of entry, and that element of the offence was not capable of proof; and
2. Evidence in relation to conduct committed in 2008 ought not to have been admitted as tendency evidence.

Held: Ground 1 upheld, ground 2 dismissed; applicant re-sentenced to an aggregate term of imprisonment for 14 months, with a non-parole period of 10 months.

Ground 1: It was not reasonably open to the jury to have been satisfied beyond reasonable doubt that the applicant had accessed the balcony externally. There was no evidence how the applicant could have gained external access.

Ground 2: The appeal on ground 2 was dismissed by majority (Beech-Jones J, with Walton J agreeing). First, the tendency evidence relied upon had “significant probative value”. The evidence strongly supported proof that the applicant possessed the alleged tendency (to be violent/threatening towards women with whom he was in/had an intimate relationship) as at the time of the alleged charges (March 2018). There was no relevant difference in this context between the violent breakdown of the 30-year relationship and the 2-year relationship (Beech-Jones J at [140]-[155], Walton J agreeing at [136]).

Further, the probative value of the tendency evidence substantially outweighed its prejudicial effect. The submission that the admission of the tendency evidence would lead to the jury having an “adverse emotional response” was rejected. The trial judge’s direction specifically warned the jury in that regard (Beech-Jones J at [156]-[157], Walton J agreeing at [136]).