

Barber v DPP [2021] NSWDC 7 (3 February 2021) – New South Wales District Court

‘Appeal against conviction’ – ‘Strangulation’ – ‘Victim experiences of court processes’

Charges: Common assault x 1.

Proceedings: Appeal against conviction.

Facts: The male appellant was convicted of assaulting his then female partner by strangulation. The appellant alleged that the complainant was the initial aggressor. He also gave evidence of past incidents, alleging that the complainant was “prone to act erratically or unpredictably.”

Grounds of appeal:

1. The complainant was not a credible witness due to inconsistencies in her evidence and, accordingly, the prosecution did not prove that the assault occurred to the requisite standard.
2. If an assault did occur, it was done in self-defence and the Crown did not negative that defence to the requisite standard.

Held: Appeal dismissed.

Ground 1: The appellant’s argument that the Crown did not prove that the elements of the offence of common assault beyond reasonable doubt was rejected, notwithstanding some differences in detail in the complainant’s evidence. “As to the suggested materiality of inconsistencies in detail in the complainant’s account, the Magistrate observed that the complainant had certain issues with her language, which she was entitled to take into account”: at [9].

Ground 2: In light of recent instances of the complainant throwing items at the accused and his laptop, “there was a reasonable possibility that the appellant subjectively perceived the prospect of further attack.” However, “a reasonable person would not have shared the same belief. There was, in truth, nothing to stop him from diffusing the situation simply by leaving the room”: at [30].