

***R v Black* [2019] QCA 114 (11 June 2019)– Queensland Court of Appeal**

‘Children’ – ‘Evidence’ – ‘Physical violence and harm’ – ‘Rape’

Charges: Assaults occasioning bodily harm x 3; Rape x 1.

Case type: Appeal against conviction.

Facts: The appellant was found guilty of 2 counts of assault occasioning bodily harm and one count of rape. He was acquitted of another charge of assault. For the offence of rape, the appellant was sentenced to 5 years’ imprisonment, suspended after 27 months with an operational period of 5 years. He was sentenced to concurrent terms of 12 months’ imprisonment on the other counts.

The appellant and complainant were married and had 2 children when the offending allegedly occurred. They separated around one year later. The first count of assault occasioning bodily harm involved allegations that the appellant pushed the complainant against a staircase, verbally abused her, ripped off her clothes and grabbed her breasts. The complainant said that she suffered bruising as a result of this event. The second count involved allegations that the appellant unlawfully assaulted and caused bodily harm to the complainant by slamming a door closed, hitting her fingers. The appellant also allegedly raped the complainant. It was alleged that the appellant and complainant were on good terms for many years after the couple had divorced. The complaint was made to the police over 8 years after the alleged events occurred and at a time when the complainant and the appellant were in litigation about their children.

Issue: The appellant appealed against the convictions on the ground that the jury’s verdict was unreasonable having regard to the evidence.

Held: The appellant submitted that the complainant’s attitude towards the appellant after separation was not that which would be expected of someone who had suffered the conduct alleged ([24]). The Court held that the cordial relationship between the parties provided a substantial basis for challenging her testimony, and may have justified a reasonable doubt in the minds of the jury in relation to the count of rape ([35]).

However the question for the Court was whether it was open, on the whole of the evidence, for the jury to be satisfied of the appellant’s guilt, having regard to the advantage enjoyed by the jury over the Court, which had not seen or heard the complainant’s evidence being given ([36]).

Their Honours noted the importance of the timing of the complaint to police. While it strongly indicated that it was affected by the litigation between the couple about their children, it did not require the jury to have a doubt about the credibility of the complainant's complaints. It was open to the jury to accept the complainant's evidence, and the Court ordered the appeals against conviction to be dismissed ([37]-[38]).