

***R v Towee* [2019] QCA 303 (20 December 2019) – Queensland Court of Appeal**

‘Children’ – ‘Evidence issues’ – ‘Jury directions’ – ‘Physical violence and harm’ – ‘Prior acts of domestic violence’ – ‘Propensity evidence’ – ‘Strangulation’

Charges: 1 x unlawful strangulation; 1 x unlawful assault

Case type: Appeal against conviction

Facts: The appellant was charged with 2 offences, committed on the same day against a woman (the complainant) with whom he was in a domestic relationship and had a child. Count 1 involved the appellant strangling the complainant ‘really tight’ for a period of about 15 seconds, stopping only when their son fell from a couch. Count 2 occurred shortly afterwards. The appellant grabbed the complainant’s hair and repeatedly said ‘bitch’ while she held their son. The appellant then destroyed her phone ([4]-[5]). The complainant also gave evidence of 5 previous incidents of domestic violence ([11]-[17]); however, the appellant did not give or call evidence ([18]). The jury convicted the appellant on both counts.

Issue: The issue for the Court was whether the appeal against the convictions should be allowed. The appellant appealed against each conviction on the ground that the trial judge wrongly admitted evidence of prior acts of domestic violence by him against the complainant. He also appealed against the conviction on the strangulation charge on the ground that the verdict was unreasonable.

Held: The Court dismissed the appeal. The evidence summarised at [4]-[18] was admitted under s 132B(2) of the Evidence Act 1977 (Qld). The question for the Court was whether the admission of the evidence resulted in a miscarriage of justice ([34]). The Court held that the evidence of prior events was relevant to establish that the alleged offending did not occur randomly and to demonstrate the nature of the relationship between the appellant and complainant. To minimise any risk of the jury engaging in propensity reasoning, the trial judge warned them that they were not to use the evidence as demonstrating the appellant’s propensity to commit similar offences ([37]-[38]). Overall, the jury directions avoided the misuse of the evidence, and no miscarriage of justice was caused by its admission ([40]).