

***R v KAP* [2016] QCA 349 (23 December 2016) – Queensland Court of Appeal**

‘Expert evidence’ – ‘Rape’ – ‘Visible injury’

Charges: Rape x 1.

Appeal type: Appeal against conviction.

Facts: The accused and the complainant were married, but separated. The accused went to the home of the deceased, and sexual intercourse took place. The complainant said that the accused had held her down and threatened her, but the accused said that the intercourse was consensual ([1]).

Issues: Whether the conviction should be overturned on the grounds that expert evidence about the frequency of visible injury in sexual assault cases should not have been adduced, and the jury should have been given directions as to how to use that evidence ([2]-[3]).

Decision and Reasoning: The expert witness gave evidence that, according to cohort studies and his own personal experience, the absence of visible injury to genitalia is not determinative of whether sexual assault has occurred ([22]-[29]). Morrison JA (with whom Philip McMurdo JA and Mullins J agreed) held that the evidence:

- > was relevant ([31]-[32]);
- > was based on admissible data ([33]-[34]);
- > fell within the scope of expert evidence because injury arising out of sexual assault is accepted as being part “of a body of knowledge or experience” which ordinary lay people would not have (citing *Osland v The Queen* (1998) 197 CLR 316 ([35]-[37]));
- > was necessary to dispel a common fallacy that physical injury normally follows rape ([41]).