

## ***R v RT (No 2) [2020] QDC 158 (13 July 2020) – Queensland District Court***

‘Assault’ – ‘Judge-only trial’ – ‘Strangulation’ – ‘Weapon’

Charges: Choking x 1.

Proceedings: Judge-only trial.

Facts: The defendant man was charged with unlawfully choking without consent while he and the female complainant were in a domestic relationship.

The complainant’s daughter’s partner intervened. Later, the complainant attempted to pursue a DFV protection order but ‘none of the police to whom she spoke did anything’. The complainant and defendant later reconciled. In December 2017, the defendant is alleged to have ‘put his right forearm across her neck and applied pressure’, pinning down the complainant so that she could not breathe. After the incident, the police attended the house.

1. During the complainant’s initial conversation with police, she ‘did not describe being choked by the defendant’. The defendant stated that he did not choke her but had held her by her arms/shoulders to ‘settle her down’.
2. When meeting with a doctor after the incident, the complainant told the doctor she felt safe at home. The doctor gave expert evidence that the complainant’s injuries were consistent with the alleged choking.
3. The relevant Constable testified that it was not until May 2020 that they were made aware of any allegation of domestic violence prior to December 2017. When asked about allegations of earlier violence, the complainant said that she had raised this with police on numerous occasions. The police were not able to get in contact with the complainant’s daughter’s partner who witnessed the January 2015 incident.

Issues: Whether the evidence of the complainant can be accepted beyond reasonable doubt.

Decision and reasoning: *Not guilty*.

The defendant argued that there were:

[39] a constellation of features inconsistent with [the complainant’s] account being truthful. These included her demeanour when speaking to police that night, her failure to immediately mention being choked and her preparedness to remain living at the house and tell the Doctor she felt safe.

The judge held that:

[39] The first and last of these matters do not in my view undermine the credit of the complainant. We are far past the days where the law expected an immediate and uncontrolled emotional reaction to an assault, and adversely viewed the credit of those who did not behave as expected. And, as noted above, staying in the house is understandable for other reasons.

However, the judge was not satisfied beyond reasonable doubt that the defendant choked the complainant in December 2017 as alleged. The fact that the complainant did not mention choking at that time raised doubts about the accuracy of her evidence.

[41] ... it seems to me to be very surprising that if the complaint had been choked she did not mention that in her first interactions with police on the night. This is especially so if she had been violently assaulted by the defendant in the past, including by being choked or strangled ... it seems to me unlikely that a person in the position of the complainant would have failed to mention being choked to the extent and for the duration alleged when first asked to give an account of the events ... There is no reason apparent to me why she could not have mentioned or demonstrated the alleged choking at this point.

[42] I do not mean by what I have written to imply there can be any universal judgement as to how alleged victims of domestic violence should behave.

[45] It is impossible to think that an experienced police officer investigating an allegation of choking in 2018 would ignore a claim that a similar event occurred, in front of witnesses, less than three years before ... [It is] unlikely that the absence of reference to the earlier incidents was the product of deliberate choice by the police officer, rather than omission by the complainant. It is reasonable to conclude that, having realised failing to refer to the other incidents at an earlier time was to her disadvantage, the complainant sought to deflect this by suggesting it was the fault of the police. That she was prepared to do so substantially damages her credit.