

***Warne v The Queen* [2020] SASCFC 12 (26 February 2020) – South Australia Supreme Court (Full Court)**

‘Appeal against conviction’ – ‘Physical violence and harm’ – ‘Protection orders’ – ‘Self-defence’ – ‘Separation’ – ‘Strangulation’ – ‘Threats to kill’ – ‘Weapons’

Charges: Assault x 1; Aggravated assault x 3; Aggravated assault causing harm x 2; Possessing a firearm without a licence x 1; Aggravated threatening life x 1.

Proceedings: Appeal against conviction.

Facts: The complainant in respect of each of the charges of violent offending was the male appellant’s then female partner. The assault charges were aggravated by reason that they were alleged to have occurred in contravention of an Intervention Order.

Grounds of appeal:

1. The trial judge erred in failing to direct the jury as to their obligations to decide the case only on the evidence, to not discuss the case with persons other than their fellow jurors, to not make their own enquiries, and to bring to the trial judge’s attention any departure from the above by any member of the jury.
2. The trial judge erred in failing to direct the jury as to self-defence.
3. The trial judge’s directions lacked balance to the extent that they resulted in a miscarriage of justice.
4. The trial judge erred in failing to adequately direct the jury in relation to the potential implications for the complainant’s credit of the timing of the photographs purportedly showing the injuries alleged to have been sustained during the course of the conduct the subject of count 1.

Held: Permission to appeal in respect of grounds 1 and 2, and allowing the appeal on ground 2, but only to the extent of setting aside the conviction on count 2 (aggravated assault causing harm) and ordering a retrial on that count, and otherwise dismissing the appeal.

Ground 1: The trial judge ought to have given post-empanelment directions to the effect contended for by the appellant. Nevertheless, there was no miscarriage of justice. This was not a case where there had been media publicity and the appellant did not identify any information of significance that might have been available through internet searching. It was speculative to suggest that the jury’s deliberations were infected by extraneous information.

Ground 2: There was a sufficient evidential basis to require that the trial judge leave self-defence to the jury in respect of the charge the subject of count 2 as the alleged assault was immediately preceded by verbal and physical aggressive conduct by the complainant. The trial judge's directions in this respect were inadequate, falling short of an accurate and clear articulation of the defence.

However, the court did not accept that the evidence as to the generally volatile nature of the parties' relationship, and instances of aggressive behaviour by the complainant on other occasions (including her use of an axe in the context of the incident leading to count 2), provided a sufficient evidential foundation for self-defence in respect of the balance of the counts of violent offending with which the appellant was charged.

The appeal in respect of ground 2 was allowed, but only to the extent of setting aside the conviction on count 2.

Application for permission to appeal on grounds 3 and 4 was dismissed. The appellant did not demonstrate any lack of balance in the trial judge's summing up.

Subsequent appeal against re-sentence was allowed: *Warne v The Queen* [2020] SASCFC 124 (21 December 2020).