

***SPC v The Queen* [2020] SASCFC 43 (28 May 2020) – South Australia Supreme Court (Full Court)**

‘Children’ – ‘People from culturally and linguistically diverse backgrounds’ – ‘Physical violence and harm’ – ‘Rape’ – ‘Relationship evidence’ – ‘Sexual and reproductive abuse’

Charges: 8 counts, including aggravated causing harm with intent to cause harm, aggravated threatening life, rape

Case type: Appeal against conviction

Facts: The appellant an was convicted of 2 counts of aggravated causing harm with intent to cause harm, 3 counts of aggravated threatening life and 2 counts of rape. He was acquitted of a charge of aggravated cause harm. The victim was the appellant’s wife, who had migrated from China in 2009, and with whom the appellant had children. The victim testified that their relationship was marred by verbal, physical and sexual abuse, and recounted an incident of violence and rape which had preceded the charged counts (relationship evidence).

Grounds:

- > The judge failed to adequately direct the jury on the use of evidence of the victim’s distress when she reported the offending to a police officer.
- > The judge failed to properly direct the jury on the use of the evidence of the violent relationship on the element of consent on the rape charges.
- > The verdict on the last rape offence (Count 8) was unreasonable because the evidence could not exclude the possibility that the appellant failed to appreciate that the victim was not consenting.

Held: Kourakis CJ (Nicholson and Bampton JJ agreeing) dismissed the appeal.

As to ground 1, the appellant argued that the judge failed to give any directions as to the proper use of the evidence of the victim's distress when she attended at the police station. It was submitted that the judge should have directed the jury that (1) because of the passage of time and the significance of the reconciliation contended for by the appellant, the distress was not relevant; and (2) if they were to use the distress as circumstantial evidence of consistency with respect to the alleged rape, they would need to be satisfied that distress was not an emotional reaction to the victim's decision to leave the appellant ([36]). The Court, however, dismissed this ground for 4 reasons. First, it was not put by the prosecutor, nor left to the jury by the judge, that the victim's distress was corroborative or supportive of her testimony ([44]). Second, the evidence was admissible due to the close temporal connection to the last rape offence, the degree of distress and the circumstances in which the victim abandoned the course in which she had enrolled to report the appellant's violence against her. The distress was also proximate to the rape the victim alleged occurred the night before ([45]). Third, the alternative explanations for the victim's distress proposed on appeal were unrealistic ([46]). Fourth, counsel for the appellant at trial consented to the judge's proposal not to give any directions on the evidence of distress ([47]).

As to ground 2, the appellant's complaint primarily related to the judge's failure to give specific directions on how the relationship evidence was relevant to prove the mental element on 2 of the rape counts ([50]). The Court found that the the judge's directions on the use of the relationship evidence in considering whether the objective elements of the offence had been established were sound ([56]). The judge did not err by omission in not directing the jury to ignore the relationship evidence on the question of the appellant's appreciation of whether or not the victim was consenting to sexual intercourse on the rape charges. Neither counsel referred to the relationship evidence on that issue. It was common ground that, notwithstanding their violent relationship, consensual sexual intercourse was a feature of their relationship. The proper use of the relationship evidence on the subjective element of the rape charges was, therefore, not a live issue at trial.

The verdict on count 8 was not unreasonable. It was sufficiently supported by the victim's evidence, and there was no evidentiary matter capable of raising a doubt as to the appellant's guilt which could not be dissipated by the jury's evaluation of her testimony ([64]).