***Hussey v Police* [2018] SASC 122 (31 August 2018) – South Australia Supreme Court**

'Children' – 'Damaging property' – 'Evidence' – 'Exposing children to domestic and family violence' – 'People with children' – 'Physical violence and harm'

Charges: Breach of bail x 1; Property damage x 2; Assault causing harm x 1.

Appeal type: Appeal against conviction for assault.

Facts: The appellant and complainant had been in a relationship for about eight weeks. Each had one daughter. The complainant was woken by her daughter vomiting. The next day, the complainant and appellant argued. When the complainant told the appellant to leave her home, he became very angry and violent. The complainant alleges that the appellant kicked, punched and shoved her. She ran to her neighbour's house with her daughter and asked them to call the police. She could hear him ripping the flyscreens off her house. The Magistrate described the appellant and complainant as witnesses who 'gave their evidence clearly and with some passion, both of them without major discrepancies'. He found the appellant guilty of assault but not guilty of the property damage charges.

Issues: Whether the verdict was open on the evidence; Whether the Magistrate adequately explained why the appellant's evidence was rejected; Whether the magistrate's reasons were adequate.

Decision and reasoning: The appellant appealed the guilty verdict on the grounds that (1) the Magistrate's reasons were insufficient to explain his finding that 'Nothing was sufficient to justify a movement of the foot sufficiently hard to damage the side of her face. He could have extracted his foot without kicking her to the cheek'; (2) that the Magistrate did not explain why his evidence was rejected beyond reasonable doubt; and (3) that there was insufficient evidence for the Magistrate to have rejected beyond reasonable doubt his version of events, which should have led to the Magistrate entertaining a reasonable doubt as to his guilt in relation to the assault charge.

Bampton J held that, having read the evidence in its entirety and in accordance with the requirements referred to in *M v the Queen* [1994] HCA 63, the finding of guilt was not supported by the evidence. The state of the evidence was such that the prosecution failed to prove that the appellant intentionally applied force to the complainant causing ‘harm to the tongue and cheek’. Her Honour held that the Magistrate did not adequately explain his finding of guilt and did not explain how the elements of assault were satisfied. The Magistrate’s reasons were not underpinned by a reasoning process linking and justifying the findings made ([53]). There was reasonable doubt as to the appellant's guilt. It was not open to the Magistrate to be satisfied beyond reasonable doubt of the appellant's guilt. Accordingly, the appeal was allowed, the verdict of guilty was set aside and a verdict of not guilty was substituted.