

## ***Brook v Police* [2020] SASC 131 (16 July 2020) – South Australia Supreme Court**

‘Aggravating circumstances’ – ‘Appeal against conviction by magistrate’ – ‘Assault’ – ‘Child victim’ – ‘Stepchild in the family’

Charges: Aggravated assault x 1.

Proceedings: Appeal.

Facts: The appellant man and the complainant’s mother were domestic partners. The complainant (child) gave evidence that his mother told him it was not safe for him to be at home and told him to go to his father’s house. The complainant did not leave the house and later had a verbal exchange with the appellant. The appellant grabbed the complainant by the throat, he then pushed him, and the complainant fell. The appellant straddled the complainant and punched him multiple times. The appellant relied on the defences of removing a trespasser and self-defence.

Grounds for appeal: (1) The magistrate wrongly rejected the appellant’s barrister’s application to appear as *amicus curiae*; (2) The magistrate erred in refusing to disqualify himself for apprehended bias; (3) The magistrate erred in his approach to witness evidence.

Decision and reasoning: *Appeal allowed on Ground 3. Conviction quashed and matter remitted to a different magistrate.* (1) Administration of justice overwhelmingly favoured giving leave to counsel to appear as *amicus curiae*. However, the magistrate’s error in failing to allow counsel to appear did not cause a miscarriage of justice. (2) The course the magistrate took in relation to the trial, including allegedly referring to the complainant as the ‘victim’, did not establish any substantial ground for a reasonable apprehension of bias. (3) The magistrate based his rejection of the mother’s evidence on the acceptance of the child’s evidence. Appeal allowed based on errors in assessing witness evidence as well as a failure to consider the defence of removing a trespasser.