

## ***Laa v The Queen* [2020] VSCA 136 (28 May 2020) – Victorian Court of Appeal**

‘Appeal against sentence’ – ‘Children’ – ‘Manifestly excessive’ – ‘Misuse of alcohol’ – ‘Non-fatal strangulation’ – ‘People from culturally and linguistically diverse backgrounds’ – ‘Physical violence and harm’ – ‘Separation’ – ‘Threats to kill’

Offences: Using a carriage service to menace, harass or cause offence; Aggravated burglary; Common assault; Making a threat to kill.

Proceedings: Application for leave to appeal against sentence

### Grounds:

1. The sentence was manifestly excessive.
2. The findings by the judge concerning the applicant’s level of remorse, and his prospects for rehabilitation, were not supported by the evidence.

Facts: The male applicant commenced a relationship with the female victim in 2006 and the couple had two children together. Their relationship involved periods of separation and reconciliation. During the periods of separation, the applicant would stay at the victim’s house overnight on the days he would see the children. However, the overnight stays and the regular visits to see the children ceased after several arguments between the applicant and the victim. One night, the applicant sent the victim 14 text messages, threatening to come after her and kill her. The next morning, the applicant went to the victim’s house and banged on the front door repeatedly. The victim told the applicant to leave and that she had called police. The applicant tried to break open a sliding door with an outdoor chair but failed, so smashed two front windows and entered the house through the unlocked front door. The victim secured herself and the children in her bedroom by placing a wedge under the door but the applicant forced the door open. The victim was on the phone to 000, so the applicant took the phone, terminated the call and hit the victim repeatedly on the head, face and neck with the phone. The children were crying as this occurred.

The victim fled outside but the applicant followed her and dragged her indoors where he forced her to the ground, choked her and told her he would kill her and her family. The applicant took the children and placed them in the car, then returned and punched the victim in the face, knocking her to the ground. He drove off (during which time the victim called 000) but returned and started banging on the front door again. The victim let him in because she did not want to antagonise him. The applicant locked the front door and punched her in the face a number of times, telling her that he would kill her whole family. Police arrived and arrested the applicant who denied the assaults and the threats to kill. He was convicted on all charges and sentenced to four years' imprisonment with a non-parole period of two years and two months.

At trial, the court accepted that the applicant was a refugee from South Sudan [20] and that he began drinking excessive quantities of alcohol due to his financial struggles and it was in this context that the offending occurred [23].

Judgment: The court dismissed the appeal. In rejecting Ground 1, the court held that the offending was particularly serious and the applicant's moral culpability was high [53], despite the mitigating factors being "quite substantial" [55]. The court noted that "confrontational aggravated burglaries, in the setting of an underlying domestic dispute, are all too prevalent in our society. They are calculated to cause lasting and serious physical and emotional harm to the victim. By their nature, such offences have the potential to escalate into incidents that result in serious harm and, on occasion, human tragedy" [50]. As a result, general deterrence is of significance in such cases [50], as is condemnation by the courts of such conduct [51]. The court further noted that "The courts have made it clear that acts of violence in a domestic setting, and in particular by men towards women, are utterly abhorrent and unacceptable" and the fact that the assaults occurred in the presence of the couple's children was a serious aggravating factor, a "serious breach of [the applicant's] duty as a parent towards his own children" and an "appalling example" of behaviour for the children, particularly the son [52].

The court also rejected Ground 2, finding that the delay between the date of offending and the date the applicant entered a guilty plea (22 months) was a sufficient basis for the judge to entertain genuine reservations about the applicant's level of remorse, and his prospects of rehabilitation [42], despite a plea of guilty often being an indicator of genuine remorse [45].