

## ***Shau v The Queen* [2020] VSCA 252 (25 September 2020) – Victorian Court of Appeal**

‘Appeal against sentence’ – ‘No history of domestic violence’ – ‘People who are pregnant’

Charges: Recklessly causing injury x 1; Reckless conduct endangering life x 1.

Proceedings: Appeal against sentence.

Facts: The appellant man punched, kicked and stomped on his pregnant wife. The attack started in a car, which his wife was driving, and ended up at a service station.

[18] Footage captured on CCTV at the service station depicts the appellant grabbing and dragging Lee by the hair on at least two occasions; punching and striking her with his hands and fists, mostly in the region of her head, on at least seven occasions; and kicking and stomping her to the head, neck, shoulder and torso region on at least 19 occasions. Lee curled up into a ball to protect her unborn child and raised her hands to protect her face.

The wife suffered extensive injuries. The appellant then drove his car at speed into the service station where his wife had sought shelter, smashing through the wall and wedging the vehicle inside the store. That conduct endangered the life of the service station attendant who had locked the doors of the shop to prevent the appellant from coming in after his wife. The victim gave evidence that there had been ‘no earlier instances of domestic violence’ and that the appellant was ‘drunk at the time of the offending’.

Issues: (1) Whether the sentence is manifestly excessive.

Decision and reasoning: *Appeal dismissed*.

Aggravating factors considered by the sentencing judge included that:

[32] ... the offending occurred in the context of domestic violence ...

[the victim] was five months’ pregnant at the time ...

It was a lengthy, repetitive and violent bashing of a woman who was considerably smaller and of much lesser strength than you ...

You must have been aware of the likelihood of injury to her ...

You must have been aware that she would be terrified as a consequence of your attack upon her and terrified of the serious risk of injury to her and to her unborn child.

Priest JA referred to his own comments in granting the application for leave to appeal observing that the seriousness of the offence in this case 'is not only to be gauged by the injuries caused, but also the manner of their infliction (in this case a protracted and very violent assault on a vulnerable victim)'.

Niall JA observed:

[46] Compounding, to a significant degree, the seriousness of the offence is the fact that it occurred within the context of a family relationship. That fact had two relevant consequences. First, it meant that the offending arose in a relationship of trust. Lee was five months' pregnant and ought to have enjoyed protection and care from her husband. The breach of trust necessarily made the offending more serious.

[47] Next, the courts must respond to the blight of family violence by imposing punishment that denounces the conduct and adequately addresses general deterrence. Unlike in many cases, there was no basis in the evidence to suggest that there had been earlier incidents of violence. In her evidence, Lee said that the appellant had never assaulted her before. For that reason, the conduct was, on the evidence, an aberration. Lee expressed support for her husband on the plea. However, there remains a very high public interest in punishing family violence, both for its denunciatory and deterrent effect, even where the victim seeks leniency and incarceration would place great pressure on the domestic relationship.

...

[50] Accommodating all of the relevant factors, both aggravating and moderating the sentence, may result in a sentence that represents a high proportion of the maximum, even on a plea of guilty.