

***DPP v Weaver (a Pseudonym)* [2019] VSCA 26 (21 February 2019) – Victorian Court of Appeal**

‘Emotional and psychological abuse’ – ‘Evidence issues’ – ‘Physical violence and harm’ – ‘Pretext call’ – ‘Sexual and reproductive abuse’ – ‘Suicide threats’

Charges: Rape x 2; common assault x 1.

Case type: Application for leave to appeal.

Facts: At the time of the offending, the respondent and the complainant were in a relationship. Their relationship was characterised by physical and emotional abuse. On two separate instances, the respondent raped the complainant ([2]-[3]). He also assaulted her by punching her in the face ([4]). In the past, the respondent had generally acted in a possessive and aggressive manner towards the complainant ([8]). He had previously made threats to commit suicide if she left him and had insisted on having sex with her on many occasions ([6]-[7]). An important piece of evidence in this application was a pretext call between the respondent and complainant. In the pretext call, the respondent made an admission to one or more of the allegations made by the complainant. Before the empanelment of the jury, the trial judge made a ruling excluding the admission into evidence of the contents of the pretext call.

Issues: Whether leave to appeal should be granted. Whether the exclusion of the evidence would eliminate or substantially weaken the prosecution’s case.

Decision and reasoning: The Court held that the trial judge did not err in considering that the jury could not reasonably conclude that the complainant specifically referred to either of the incidents subject to the two rape charges in the pretext call ([45]). Further, it was held that the trial judge correctly accepted that the jury could conclude that the respondent did make an admission of sexual misconduct in the pretext call. However, this admission was of limited probative value in the context of the case. The trial judge did not err in concluding that the probative value of the evidence would be outweighed by its prejudicial effect ([54]). Consequently, the Court concluded that the applicant should not be granted leave to appeal the decision of the trial judge to exclude the contents of the pretext call from evidence ([55]).