

***JLD v The State of WA* [2020] WASCA 156 (18 September 2020) – Western Australia Supreme Court (Court of Appeal)**

‘Aggravated assault’ – ‘Aggravated rape’ – ‘Application for leave to appeal against refusal to grant bail’ – ‘Coercive control’ – ‘Domestic violence’ – ‘Immolation’ – ‘Risk assessment’ – ‘Technology-facilitated abuse’

Charges: Aggravated sexual penetration without consent x 1; Common assault in circumstances of aggravation x 1; Threats to injure, endanger or harm any person x 1.

Proceedings: Appeal against refusal to grant bail.

Facts: The male appellant and female complainant were married in 2015. The complainant first reported domestic violence to relevant services in October 2019. The complainant reported that the appellant was emotionally abusive, jealous and controlling, including requiring the complainant to disclose her Facebook password to him, ‘monitor[ing] and question[ing] her on every expenditure on their bank statement’ and telling the complainant there was a ‘hidden camera in the house’ [22]-[23].

In February 2020, during an argument, the appellant made threats against the complainant including: ‘[y]ou and your daughter deserved to be burned alive like the Queensland family’ and accused the complainant of infidelity.

In March 2020, the complainant was recovering from surgery at home. The appellant demanded that the complainant have sex with him. When she refused, he forced her legs open and slapped her in the face saying ‘I’m still your husband and you’re bound to do it’ before raping her. A DFV protection order was made against the appellant to protect the complainant and her daughter.

Grounds: The primary judge erred in finding that the appellant posed a significant risk of interfering with the complainant such that there were no conditions that could be imposed on bail that could sufficiently protect the complainant.

Decision and reasoning: *Leave to appeal refused. Appeal dismissed.*

The primary judge was entitled to receive and take into account the information in the bail risk assessment report (prepared by a family violence worker).

[69] The risk assessment report, and the information on which the report was based, raised issues of serious concern in relation to the appellant's psychological or psychiatric state and the safety and welfare of the complainant and her daughter if the appellant were to be granted bail. There were reasonable grounds, based on that information, for apprehending that the appellant may have engaged in an escalating process of serious family violence of a sexual character, including threats of greater violence, and may attempt to interfere with the complainant as a witness.

The primary judge was correct to reject the appellant's submission that the nature of the complainant's employment indicated that she had support in the community and was not vulnerable:

[26(c)] Her Honour rejected the appellant's submission that the nature of the complainant's employment indicated that she had support in the community and was not vulnerable. Her Honour said that offences of domestic violence are not confined to offences against unemployed women at home and that serious domestic violence against women occurs at all levels of society and affects all occupations (ts 4 - 5).

...

[80] Her Honour was obliged to have regard to matters favourable to the appellant's application, including the presumption of innocence, the absence of a prior criminal record, the fact that the appellant had not actually interfered with the complainant (or any other person) as a witness, his stable and well-paid employment, his need to work to obtain revenue to meet his expenses including the cost of legal representation for his trial, the impact of the COVID-19 pandemic and the time that would elapse before his trial could be listed for hearing.

We are satisfied that her Honour had regard to all matters which militated in favour of a grant of bail.

However, the nature and extent of the relevant risk justified her Honour's decision to refuse bail.