

***R v Young* [2020] QCA 140 (26 June 2020) – Queensland Court of Appeal**

‘Appeal against conviction’ – ‘Inconsistent verdicts’ – ‘Non-fatal strangulation’ – ‘People affected by substance misuse’ – ‘Physical violence and harm’ – ‘Reliability’ – ‘Temporary protection order’

Charges: Assault occasioning bodily harm whilst armed x 1; common assault x 1; choking in a domestic setting x 1

Case type: Appeal against conviction, application to adduce evidence on appeal

Facts: The appellant man was charged on indictment with one count of assault occasioning bodily harm whilst armed (Count 1), one count of common assault (Count 2) and one count of choking in a domestic setting (Count 3). The Crown entered a nolle prosequi in respect of Count 1. All counts were domestic violence offences against the appellant’s female domestic partner. The complainant’s evidence at trial was that it was a mutually abusive relationship against a background of excessive drinking. A temporary protection order was made against the appellant in favour of the complainant in 2017. In relation to Count 2, it was alleged that the appellant kicked the complainant on the legs, causing her to fall. With respect to Count 3, it was argued that he grabbed the complainant around the throat. A jury found the appellant not guilty of Count 2, but guilty of Count 3. He was sentenced to 2 years’ imprisonment, with the conviction recorded as a domestic violence offence.

Issue: The appellant sought leave to adduce further evidence and appealed his conviction on the basis that the verdict was unreasonable or could not be supported having regard to the entirety of the evidence. He also submitted that the evidence against him was unreliable, inconsistent and not capable of supporting a verdict of guilty on Count 3, and that there was no corroborative evidence in relation to the complainant’s allegations as to how the strangulation occurred. The Crown argued that whilst there were weaknesses in the complainant’s evidence in terms of her reliability, those factors were fairly outlined by the trial judge in the summing up, and that the complainant’s evidence was able to be supported by other evidence.

Held: The application for leave to adduce further evidence was refused, and the appeal against conviction was dismissed. The Court found that the jury was undoubtedly fully aware of the inconsistencies in the evidence ([99]). Taking into account all of the appellant's arguments, there was nothing which led the Court to doubt the appellant's guilt. It was open to the jury, on the whole of the evidence, to be satisfied of his guilt beyond reasonable doubt. The complainant's account of the choking after a sustained argument in the kitchen was compelling ([102]). That account of the attack and the pressure she felt was substantiated by the medical evidence, which also indicated that the injuries were consistent with choking ([103]). Further, the evidence of witnesses was substantially consistent with the complainant's account. Whilst there is "no requirement that a complainant's evidence be corroborated before a jury may return a verdict of guilty upon it" (Pell v The Queen [2020] HCA 12 (7 April 2020)), there was in fact strong corroborative evidence here. Despite some inconsistencies, particularly in relation to the time of the choking, the Court was satisfied that the jury acting rationally would not have entertained a reasonable doubt as to proof of guilt. Given the complainant's level of distress at the time and her acceptance during the course of her evidence that her memory of some events of that day were unclear, a mistake as to the time the choking event occurred was understandable ([104]-[105]).