***R v TAQ* [2020] QCA 200 (15 September 2020) – Queensland Court of Appeal**

'Appeal against conviction' – 'Application for leave to appeal against sentence' – 'Miscarriage of justice' – 'Sexual abuse' – 'Tendency/relationship evidence'

Charges: Common assault x 9; Assault occasioning bodily harm x 1; Assault occasioning bodily harm while armed x 4; Rape x 1 (Charge 15).

Proceedings: Appeal against rape conviction (Charge 15); Application for leave to appeal against sentence.

Facts: The female complainant was the male appellant's former de facto partner. From 2006 the appellant became increasingly violent and controlling and committed numerous charged and uncharged assaults between 2006 and 2011. In October 2011, the appellant said to the complainant, "If you love me, darling, you'll do it [anal]. If you don't do it, I am going to turn you over and rape you". The appellant then anally raped the complainant, after which he demanded oral sex and then hit her in the head. In December 2012, the complainant left the appellant but did not report the rape and assault to police until December 2016. In 2012, the appellant said to Mr P (a witness) that "he'd raped [the complainant]" and "if he didn't get what he wanted, he'd take it".

Grounds: (1) Mr P's evidence of the conversation with the appellant should not have been admitted.

Decision and reasoning: *Appeal against conviction dismissed. Appeal against sentence allowed due to a calculation error.*

The prosecutor at trial argued that Mr P's evidence that the appellant had said he'd raped the complainant could amount to an admission. The trial judge expressed doubt as to whether the jury could infer that it was an admission to the specific incident (Charge 15). In the summing up, the trial judge explained to the jury that Mr P's evidence related more generally to "other incidents in which the [appellant] has through his actions, demonstrated a sexual interest in the complainant even when she is not consenting and was prepared to act on that interest" [28]. The respondent relies on *R v Sakail* [1993] 1 Qd R 312 as making the evidence of Mr P admissible on the basis that an admission to a rape which is not charged can be used as evidence of the nature of the relationship relevant to the charged rape:

[32] Where the act in issue for [rape] count 15 was the act of anal intercourse without the consent of the complainant, evidence of other sexual acts between the appellant and the complainant as a result of the appellant's threats or without the consent of the complainant was evidence that could rationally affect the assessment of the probability of the occurrence of the anal rape, as described by the complainant. The direction given by the trial judge focused on the nature of the conduct to which the appellant admitted in his conversation with Mr P which was a willingness to act on his sexual interest in the complainant in the absence of her consent. The evidence of Mr P was admissible as relationship evidence that revealed a tendency of the appellant to engage in sexual acts with the complainant without her consent.

[33] The appellant does not succeed on the ground of appeal that Mr P's evidence was inadmissible.