

***Ackland v Director of Public Prosecutions (Qld)* [2017] QCA 75 (28 April 2017) – Queensland Court of Appeal**

‘Assault’ – ‘Bail’ – ‘Risk of re-offending’

Charges: 1 x Assault occasioning bodily harm; 1 x Choking.

Appeal type: Defendant’s appeal against denial of bail application.

Facts: The victim alleged that, during an argument, the appellant: threatened to knock her out; grabbed her by the throat; punched her in the face; and, when she indicated that she was going to call the police, destroyed photographs in the house (see [8]-[10]).

The trial judge refused bail on the basis that:

- > 12 months earlier, the appellant had committed a breach of a domestic violence order against a former girlfriend (see [12]);
- > the Crown case appeared to be strong, by evidence of photographs of cuts and abrasions (see [14]); and
- > there was a danger to female victims in such domestic violence situations (see [18]).

His Honour referred to, but did not place weight on, a handwritten note from the victim indicating that she wanted to withdraw the charges (see [15]-[16]).

Issues: Whether the trial judge erred in denying bail to the defendant.

Decision and Reasoning: The appeal was dismissed.

Atkinson J, with whom Morrison JA and Douglas J agreed, considered that the trial judge’s discretion had not been improperly exercised (see [27]). The appellant had submitted that the trial judge based the risk of re-offending on an irrelevant ground, namely a generalised risk to victims of repeated offences. However, Atkinson J considered that the trial judge properly considered the particular risk to the victim, evidenced by two assaults being committed 10 hours apart, the victim’s concern, and the previous breach of domestic violence order (see [28]-[29]).

At the time of the bail application, amendments to the Bail Act which reversed the presumption of bail for domestic violence offences had not come into effect (see [30]). By the time of the appeal against bail, the amendments had come into effect. Giving effect to the reversed onus, Atkinson J considered that the appellant had not satisfied the court that he did not represent an unacceptable risk of re-offending (particularly against the victim) while on bail (see [35]).