

***R v Skey* [2020] QDC 27 (9 March 2020) – Queensland District Court**

‘Choking’ – ‘Evidence’ – ‘Evidence by video-link’ – ‘Pre-recording evidence’ – ‘Special witness declaration’ – ‘Strangulation’ – ‘Support person’ – ‘Victim experience of court processes’

Proceedings: Application for orders to permit the complainant to give evidence over video-link, for her to be supported by another person when she testified, and to have her evidence recorded before the commencement of the trial.

Issue: The correct interpretation of s21A of the Evidence Act 1977 (Qld)

Facts: Defendant man was charged with choking his female partner without consent and was convicted and sentenced to imprisonment. A week before trial, the prosecution made an application for orders to permit the complainant to give evidence over video-link, for her to be supported by another person when she testified, and to have her evidence recorded before commencement of the trial. The defendant opposed the victim giving evidence over video-link and the pre-recording of her evidence.

Judgment: Cash DCJ made orders permitting the complainant to testify at the trial over video-link and with a support person.

The Court rejected the Prosecution's submission that "by not enacting a requirement to show likely disadvantage or trauma in section 21A(1)(d), parliament intended there to be a presumption of disadvantage which is itself sufficient to warrant departure from normal procedures". This submission was rejected for two reasons. First, the common law principle "that the defendant in a criminal trial should be confronted by their accuser in order to challenge their evidence was not displaced by s12A". Second, "there is nothing in s21A which compels the conclusion that any of the measures permitted by section 21A(2) are to be adopted automatically for any special witness" [9].

Regarding the order to permit giving evidence via video-link, the judge was satisfied that the capacity of the complainant to give evidence would be improved if she did not give the evidence in the defendant's presence. The Court rejected the defendant's submission that the defendant would suffer 'impermissible disadvantage' if evidence was given over video-link and provided that there is research to suggest that an average person's ability to detect lies based on 'demeanour' is little better than chance.

The judge rejected the Crown's request to pre-record the evidence as His Honour "not prepared to assume that a retrial would be such a likely outcome as to justify the order sought" [20].