

***NJB v Commissioner of Police* [2021] QDC 42 (4 March 2021) – Queensland District Court**

‘Appeal against conviction and sentence’ – ‘Breach of protection order’ – ‘Credibility’ – ‘People with disability and impairment’ – ‘Physical violence and harm’ – ‘Protection order’ – ‘Victim experience of court processes’

Charges: Contravening a domestic violence order.

Proceedings: Appeal against conviction and appeal against sentence.

Facts: The critical issues that had to be determined by the magistrate below were whether the male appellant, as stated by the female respondent, punched her to the side of her head after a series of arguments or, whether because of her lengthy and serious history of seizures, the court could not be satisfied beyond reasonable doubt that the injury was not the consequence of the respondent having a seizure, falling and thereby injuring herself. The appellant was found guilty and sentenced to four months imprisonment, with a parole release date set after two months.

Grounds of appeal:

Appeal against conviction:

1. The magistrate’s findings of the respondent’s credibility or reliability were unreasonable or could not be supported by the evidence (Grounds 1 and 2).
2. The magistrate erred in permitting the appellant to be asked about bad character without leave being sought and granted, and against objection (Ground 3).

Appeal against sentence: The sentence was manifestly excessive.

Held:

Appeal against conviction dismissed.

Grounds 1 and 2 were dismissed. Contrary to the appellant’s submission that the respondent was intoxicated on the night of the offending, the evidence supported the fact that she was no more than ‘tipsy’. The argument that the respondent had a motive to lie about the assault was also unclear and implausible.

The appellant further submitted that the magistrate failed to give sufficient weight to the respondent’s evidence minimising the frequency of her seizures. In dismissing this argument, his Honour said:

“It can be accepted that at times, the respondent did tend to downplay the frequency of those seizures. That, of course, is not to her credit. That said, the nature and extent of the seizures were clearly distressing to her and, quite likely, a source of embarrassment. That the respondent might tend to downplay her condition does not, in my view, materially damage her credit. Further, the cross-examination of the respondent on this topic was not only distressing for the respondent, it was also, at times, quite confusing. That may also be another reason which goes some way to explaining the conflicting evidence on this issue.”

There was no room for a reasonable doubt that the injury suffered by the respondent was the result of the respondent having a seizure and falling or otherwise sustaining the injury as a result thereof. It followed that the court was satisfied beyond reasonable doubt that the appellant was guilty of committing the offence charged.

Ground 3 was also dismissed. The cross-examination of the respondent and the evidence led from the appellant by his solicitor clearly left it open for the prosecutor to raise an alleged prior incident and put it to the appellant. In any event, the appellant denied the matter and the magistrate observed that that was as far as the matter could go.

Appeal against sentence allowed.

His Honour recognised that the cross-examination of the respondent about her medical history was prolonged and distressing, however this had to be seen in light of her somewhat confusing evidence. His Honour recognised that: “I have no doubt that the cross-examination could have been carried out much more efficiently and greatly shortened both the length of the cross-examination and the distress caused to the respondent.” That said, it was wrong to describe the cross-examination as largely unnecessary and irrelevant.

None of the appellant’s favourable antecedents were mentioned or given weight by the magistrate (appellant’s strong work ethic, employment, character references, and relationships with his mother and children). This was an error in the exercise of the sentencing discretion. The sentence imposed was manifestly excessive and the appellant re-sentenced to 30 days imprisonment.