SUPREME COURT OF QUEENSLAND

CITATION:	*R v Pattison* [2019] QCA 30
PARTIES:	**R** **v** **PATTISON, Joel Wayne** (appellant)
FILE NOS:	CA No 132 of 2018 DC No 1596 of 2016
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	District Court at Brisbane – Date of Conviction: 10 May 2018 (Jarro DCJ)
DELIVERED ON:	26 February 2019
DELIVERED AT:	Brisbane
HEARING DATE:	8 February 2019
JUDGES:	Sofronoff P and Gotterson and McMurdo JJA
ORDER:	**Appeal dismissed.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – VERDICT UNREASONABLE OR INSUPPORTABLE HAVING REGARD TO EVIDENCE – APPEAL DISMISSED – where the appellant was convicted of grievous bodily harm for fracturing the complainant's jaw – where the complainant gave evidence that she was punched in the face by the appellant – where the complainant admitted that she did not see the appellant punch her – where the appellant gave evidence at trial of an alternative hypothesis for the cause of the complainant's injury – where the appellant's evidence was that the complainant's injury was caused when she slipped on water and fell on her face – whether the jury could have reasonably excluded the hypothesis proposed by the appellant – whether the verdict was unreasonable having regard to all the evidence *M v The Queen* (1994) 181 CLR 487; [1994] HCA 63, applied
COUNSEL:	G M McGuire for the appellant D L Meredith for the respondent
SOLICITORS:	Legal Aid Queensland for the appellant Director of Public Prosecutions (Queensland) for the respondent

[1] **SOFRONOFF P:** The appellant was convicted of one count of doing grievous bodily harm to Sarah Schneider. At the trial, the appellant accepted that Ms Schneider had suffered grievous bodily harm, in the form of a broken jaw, but denied that he had caused the injury.

[2] Ms Schneider's evidence was to the following effect. She and her infant daughter moved into a flat in Zillmere in early 2013. The appellant lived in the same block of flats together with his father, Wayne Pattison, and his sister, Tamara Pattison. After a few months, Ms Schneider and the appellant entered into a relationship and, although they never fully cohabited together, they had two children. Their relationship was not good. When the appellant drank he did so to the point of drunkenness and would become angry. He did not drink every day but would customarily do so on payday. He was a jealous man. He resented any contact between Ms Schneider and the father of her daughter. The appellant prohibited Ms Schneider speaking to her daughter's father, including answering his phone calls, unless the appellant was present.

[3] On the afternoon of Thursday, 25 June 2015, Ms Schneider was at her flat with the appellant's sister, Tamara. They were looking at photos on Ms Schneider's phone when she received a phone call. Her swiping action to look at photos resulted in the call being answered unintentionally. It was her daughter's father calling. Ms Schneider immediately terminated the call. That night she admitted to the appellant what had happened and he "wasn't happy with the situation".

[4] One of Ms Schneider's and the appellant's children had particular medical needs and, because of this, it was her habit to sleep together with him and his infant brother on a double mattress on the floor of their lounge room. She was sleeping there just after midnight on the Saturday following the phone call when the appellant appeared at her front door. Ms Schneider opened the front door but kept the screen door closed and locked. The appellant said that he wanted to come in. He was "very drunk". He said he had been sitting in the park nearby and had seen the upstairs light in Ms Schneider's flat going on and off for about four hours. He wanted to know who she "had there". Ms Schneider told him not to be stupid and that what he had seen was probably the reflection of her television, which was on. She said she would see him tomorrow and shut the door. As she returned to the lounge room one of her outdoor patio chairs came crashing through the lounge room window. It smashed the window glass entirely, and landed on the top of the television in the lounge room. The television was only a metre and a half from where the children were sleeping on the floor. Ms Schneider opened the front door but did not see anyone. Almost immediately the appellant's father and sister arrived. The appellant's father took Ms Schneider, as well as her sons and her six-year-old daughter, with him to his own flat for the night.

[5] They had just settled the children for the night when the appellant appeared once more. Wayne went outside to speak to his son. The appellant demanded to be let into the flat. He told his father, "If you don't let me in I'm going to smash your car up." This argument continued until the appellant came into the flat. He said to his father, "You're trying to take my missus now."

[6] The appellant, Tamara and Ms Schneider stood together near the front door. Wayne had left the room. Ms Schneider's back was to the wall. The appellant said to her, "You want to be with my father now and take my kids from me." Ms Schneider looked towards Tamara and "rolled her eyes". In that moment, as she was looking away from the appellant, she felt a blow to her face and fell to the floor, landing on

her hands and knees. No other part of her body touched the ground. Her mandible had been fractured.

[7] The appellant left. Ms Schneider was bleeding. Tamara went to get a towel to staunch the bleeding. Police were called but, by the time they arrived, the appellant had vanished.

[8] The appellant returned to the flat on the morning of the same day at about 7.00 am. Ms Schneider and Wayne were then in the front courtyard of the flats. Wayne said to his son, "Look what you've done to her." The appellant looked at Ms Schneider and said, "You deserve it." Ms Schneider underwent surgery and was discharged on the following Monday.

[9] The appellant's counsel put to Ms Schneider that she had slipped and fallen to the ground and had, as a result, fractured her jaw. The medical evidence was that a fall to the ground might fracture a person's jaw. The appellant denied that that had happened. It was put to Ms Schneider that she had not actually seen the appellant hit her and she accepted that that was so.

[10] More than a year after the incident, at the request of the appellant's solicitor, Ms Schneider signed a written statement describing the events. Relevantly, in cross-examination Ms Schneider accepted that statement said the following:

> "I really do not know how I suffered the injuries to my jaw. Whilst I cannot rule out completely the possibility that he may have hit me, I do not know whether he hit me or not…
>
> … I know that while Joel and I were arguing we both slipped in this bowl and fell over. It's possible I broke my jaw as a result of this fall."

[11] Ms Schneider explained how she came to sign that statement:

> "All right. Do you remember giving his solicitor a statement?--- I do, yes.
>
> Thirteenth of September 2016?--- I do, yes.
>
> And you sat with the solicitor on your own, just to be sure about this, you weren't forced?--- While Joel had the children in the foyer, yes.
>
> Okay. But you weren't forced to go and see him?--- Manipulated.
>
> …
>
> Just excuse me a moment. It's just been pointed out to me, then, in the statement you gave the solicitor – I should put this to you, to be fair: *"I know that while Joel and I were arguing we both slipped in this bowl and fell over. It's possible I broke my jaw as a result of the fall."*?--- No.
>
> You don't – but you did say that in your statement, didn't you?--- Well, in all honesty, Steve [the appellant's solicitor] had this little recorder and Steve spoke and then I signed. He had the lady type it up ---
>
> Well ---? ---out the front and then I signed it, so ---

> All right. Okay. Well, let's do it this way – okay?--- It's in exact [the] solicitor's words, not my words.
>
> …
>
> And it was the truth; the statement was the truth?--- No, the first statement [given to police] was the truth. That – I'm trying to help him. I was trying to make it better. I don't want to see him go to jail. I don't believe – I'm scared that if Joel goes to jail, what happens afterwards. Okay. I want the happy family that we've had and that we've promised each other we're going to have. And I thought that if there was anything that I could do to help, I would."

[12] The only other witness who was present when Ms Schneider's jaw was broken was the appellant's sister, Tamara. She was a prosecution witness. When asked if she could recall the events of that night she responded, "Sort of, yes." She said that she had gone to bed and had been woken by the sounds of argument. She went downstairs and saw the appellant and Ms Schneider in a confrontation. She remembered being in the kitchen making coffee and, when she came into the lounge room she saw "they were getting up off the floor". She did not say how Ms Schneider came to be on the floor. She said that the appellant then went outside. Ms Schneider "sat on the lounge there and she was a bit upset". She could not recall if the children were there or not at this point in time but did remember that "at some point … maybe before that … she asked me to come over to her place and get the kids". On Ms Schneider's unchallenged evidence she and her three children had taken sanctuary in the Pattison's flat together. According to Tamara, Ms Schneider stayed the night and, on the following morning, she "said she wanted to go to the hospital because her mouth was sore".

[13] The account the appellant's sister gave the jury failed to refer to any reason why Ms Schneider might have been present in the flat that night. She could barely remember that police had been called (a matter expressly admitted by the defence, where it was her phone that had been used to place the emergency call) and denied that police had attended in response to that call (another fact admitted by the defence). She even appeared unaware that Ms Schneider's jaw had been broken ("it was a little bit swollen").

[14] The appellant's sister acknowledged that, by the time she had gone to bed that night, she had drunk "probably a six-pack to a 10-pack of rum", by which she meant six to 10 cans of rum and soft drink mixture. She described her resulting condition as "Maybe just a bit tipsy. Not too bad". It was open to the jury to conclude that the quality of Tamara's evidence could be explained by her drunkenness.

[15] If the jury accepted the truth of Ms Schneider's evidence, then that evidence proved beyond any doubt that the appellant had struck Ms Schneider in the face with such force that he fractured her jaw. Her evidence, if accepted, established the circumstances in which the offence had been committed. The appellant was in an irrationally jealous rage. He was drunk and angry. He threw a chair through the window of Ms Schneider's flat, sending it together with shards of broken glass into the place where his two infant children and Ms Schneider's young daughter were sleeping. There was evidence that this was not an isolated incident and that it was consistent with their relationship. The defence admitted that a protection order had been made requiring the appellant to be of good behaviour towards Ms Schneider, requiring

him not to commit acts of domestic violence against her and forbidding him from entering Ms Schneider's premises while affected by alcohol.[1] It was not put to Ms Schneider that her evidence that the appellant "was very jealous and would get very angry at me, for whatever reason" was untrue. On the contrary, the appellant's counsel put to her that "whenever he had anything to drink there would be issues between you and you'd start to argue and fight". The appellant's statement "You deserve it", if the jury accepted that it was made, constituted an implicit admission that he had caused the injury.

[16] According to Ms Schneider, her face never came into contact with the floor and she fell because she had been punched and not for any other reason. On her evidence, the only possible inference was that the appellant had broken her jaw. It is true that she did not see his punch coming. But she is not the first person to have been dealt a coward's blow to the face while looking away.

[17] Proof that the appellant broke Ms Schneider's jaw was by way of inference from other proven facts. However, if the jury accepted Ms Schneider's evidence that inference was irresistible.

[18] The defence theory was that Ms Schneider slipped on water that had spilled from a dog's drinking bowl and, somehow, had fallen on her face so as to fracture her jaw.

[19] The appellant elected to give evidence. He admitted that he and Ms Schneider had an argument on the previous day. When asked by his counsel what the argument had been about he declined to say but explained that, "It wasn't really much". He agreed with his counsel's suggestion that "something happened to one of the windows". He claimed that he was sitting on a patio chair, had leaned back and "I hit the window". He did not explain the mechanics of this event. He said nothing about the chair ending up inside the flat. This explanation for the broken window emerged for the first time in the appellant's evidence. Ms Schneider's evidence about the chair being thrown through her window had not been challenged.

[20] The appellant said that there had been "some pushing and shoving" and the dog's water bowl had been knocked over spilling water on the floor. He said that he and Ms Schneider then slipped on the water and fell to the ground together. He said that he had not seen Ms Schneider fall. He did not say that he had seen her fall onto her face in such a way as to fracture her jaw.

[21] The appellant denied punching Ms Schneider. He said that he only found out later that her jaw was broken. He denied saying, "You deserve it."

[22] According to the appellant, he did not have a drinking problem (despite the tenor of his own counsel's cross-examination of the complainant). He said that he did not become jealous when he drank (despite the complainant's evidence to the contrary not being challenged). He said that he had no objection to Ms Schneider's maintaining contact with her daughter's father (although the complainant's evidence to the contrary was not challenged).

[23] In convicting the appellant, the jury must have rejected his evidence and accepted the evidence of Ms Schneider.

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[1] Admitted pursuant to s 132B of the *Evidence Act* 1977 (Qld); *cf. Roach v The Queen* (2011) 242 CLR 610 at [43], [44] and [45].

[24] The appellant appeals on the ground that the verdict was unreasonable and unsupported by the evidence.

[25] This ground of appeal invokes the principle explained by the High Court in *M v The Queen*.[2] As the plurality said, the question thus posed is one of fact which the court must decide by making its own independent assessment of the evidence to determine whether it would be dangerous, in all the circumstances, to allow the verdict of guilty to stand.[3] The question that the court must ask itself is whether it thinks that upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty.[4]

[26] To support his case, the appellant submits that "the jury could not have excluded the reasonable hypothesis that the complainant slipped on water and broke her jaw when she hit the ground".

[27] This submission must be rejected. The direct evidence given by Ms Schneider was that she was hit in the face while standing and this caused her to fall. She twice denied that she had slipped. She said that when she fell, her face did not touch the ground or any other surface. As I have already said, if the jury accepted her evidence it would have been open for them to conclude that the appellant broke her jaw. Once the jury decided to accept Ms Schneider as a truthful witness and to disbelieve the appellant, a guilty verdict was inevitable.

[28] This was not a case in which, from an agglomeration of circumstantial evidence, more than a single hypothesis arose. This was a case in which the evidence of the complainant and the evidence of the appellant conflicted.

[29] The appellant points to the contents of the statement that Ms Schneider signed at the behest of the appellant's solicitor as rendering her evidence incapable of acceptance. However, that statement does not, in my view, contradict Ms Schneider's evidence. It merely reaffirms, albeit with some emphasis, that she did not see the appellant punch her. At the trial, her evidence was to the same effect with one difference. The difference was that in the statement Ms Schneider acknowledged the possibility that her injury might have been due to either cause. However, that did not alter the fact that it was for the jury to decide whether they were satisfied that the appellant caused the injury. It was open for them to conclude that the circumstance in which the written statement was extracted meant that it had no evidentiary value. In addition, the jury might have taken into account that the appellant did not say that he saw Ms Schneider's face hit the floor. Nor did his counsel put to her that that was how her jaw came to be broken.

[30] The appellant also points to Tamara Pattison's evidence in which she did not say she was present when the blow was struck. But the jury was entitled to reject the appellant's sister's evidence in its entirety.

[31] For these reasons, there is no merit in the appeal and it should be dismissed.

[32] **GOTTERSON JA:** I agree with the order proposed by Sofronoff P and with the reasons given by his Honour.

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2 (1994) 181 CLR 487.

3 *ibid*. at 492-493 per Mason CJ, Deane, Dawson and Toohey JJ.

4 *ibid*. at 493.

[33] **McMURDO JA:** I agree with Sofronoff P.