

SUPREME COURT OF QUEENSLAND

CITATION: *R v BFI* [2026] QCA 178

PARTIES: **R**
v
BFI
(appellant)

FILE NO/S: CA No 176 of 2025
DC No 128 of 2025

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction

ORIGINATING COURT: District Court at Brisbane – Date of Conviction: 27 June 2025 (McCarthy KC DCJ)

DELIVERED ON: 22 September 2026

DELIVERED AT: Brisbane

HEARING DATE: 19 August 2026

JUDGES: Mullins P, Doyle JA, Smith J

ORDER: **Appeal dismissed.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS OF APPEAL – INCONSISTENT VERDICTS – where the appellant was convicted on three counts and acquitted on the remaining counts – where all counts relied upon the complainant’s evidence – whether the convictions were inconsistent with the acquittals – whether the verdicts were unreasonable

CRIMINAL LAW – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS OF APPEAL – MISDIRECTION AND NON-DIRECTION – where deprivation of liberty was particularised as preventing the complaint from leaving by physical force – where the jury sought clarification as to proof of the particulars – whether the trial judge was required to redirect the jury on the deprivation of liberty charge – where the defences of provocation and prevention of repetition of insult were left in relation to one assault but not a subsequent assault – whether the defences were raised on the evidence – whether any failure to direct occasioned a miscarriage of justice

Criminal Code (Qld), s 268, s 269, s 270

BSJ v The State of Western Australia [2023] WASCA 5, cited
Brawn v The King (2025) 99 ALJR 872; [2025] HCA 20, cited

MacKenzie v The Queen (1996) 190 CLR 348; [1996] HCA 35, cited
Pemble v The Queen (1971) 124 CLR 107; [1971] HCA 20, cited
R v Baden-Clay (2016) 258 CLR 308; [2016] HCA 35, distinguished
R v Gleeson [\[2026\] QCA 127](#), cited
R v Lefoe (2024) 20 QR 851; [\[2024\] QCA 240](#), applied

COUNSEL: K M Hillard for the appellant
 S J Gallagher for the respondent

SOLICITORS: Rana Lawyers for the appellant
 Director of Public Prosecutions (Queensland) for the respondent

- [1] **MULLINS P:** I agree with Doyle JA.
- [2] **DOYLE JA:** The appellant was charged on 10 counts but convicted on counts 6, 7 and 8 only, being acquitted on the other counts. This is an appeal from the conviction, on those 3 counts.
- [3] Broadly the counts concern events across three days in May 2024. Each concerned the same complainant.
- [4] Count 1 charged that on 4 May 2024 the appellant raped the complainant. Counts 2 and 3 were that on 5 May 2024 he sexually assaulted her.
- [5] The rest of the events the subject of Counts 4 to 10 are particularised to have occurred on 6 May 2024. The charges are summarised below, and the particulars are set out below in respect of each charge, namely:
- (a) Count 4: a charge of rape with the particulars being:
 “[The appellant] penetrated [the complainant’s] mouth with his penis without her consent.”
 - (b) Count 5: a charge of unlawful and indecent assault with the particulars being:
 “[The appellant] touched [the complainant’s] vagina with his mouth/tongue without her consent.”
 - (c) Count 6: a charge of unlawful assault with the particulars being:
 “[The appellant] threw [the complainant] to the ground without her consent.”
 - (d) Count 7: a charge of unlawful assault and bodily harm with the particulars being:
 “[The appellant] dragged [the complainant] along the ground which caused an abrasion to the right elbow and/or left shoulder blade.”
 - (e) Count 8: a charge of unlawfully depriving of personal liberty with the particulars being:

“[The appellant] detained [the complainant] in the bedroom against her will. He did this by not letting her leave the room by physical force.”

- (f) Count 9: a charge of unlawful assault and bodily harm with the particulars being:

“[The appellant] struck [the complainant] to the face which caused either bruising or swelling to her face. This was done without her consent.”

- (g) Count 10: a charge of unlawful strangling without consent and the particulars being:

“[The appellant] strangled [the complainant] by applying external force to her neck which restricted her breathing. And at the time, a spousal or former spousal relationship existed between [the appellant] and [the complainant].”

The Evidence

- [6] For the moment I will focus on the evidence given in respect of the three counts of which the appellant was convicted.
- [7] The primary evidence was that of the complainant. Relevantly, in some respects, her evidence was supported by the evidence of her son (not the son of the appellant), the police, some photos and by some medical evidence.

The Complainant

- [8] The complainant’s evidence was that on Monday, 6 May 2024 (the Labour Day holiday) she returned from her usual morning trip to the temple. Her son, she says, started watching TV and she went upstairs to stand somewhere near the appellant’s bedroom door. The appellant and the complainant had separate bedrooms. She asked him if he wanted something to eat, in response to which she maintains he got very angry. Thereafter she said she became frustrated and wanted him to leave the house. Her evidence was that she took his clothes from his closet in his bedroom, put them on the bed and asked him to leave. Thereafter (in relation to each of counts 6 to 8) she stated:

“Did he leave? ---No, he was – he got really, really angry.

And when he got really, really angry, did he do anything towards you?

---Yes. He - - -

What did he do? --- - - - he ca – he just came, he grabbed me, and he pushed me, and I fell on the floor. I remember I hit something because I passed – I just felt a white light in front of my eyes. I was lying on the floor. He – he kicked. I was – was just shocked. And then I remember him pulling me, dragging me from his bedroom and my hands and my legs rubbing the carpet and dragged to my bedroom. And then he closed the door, and then he was hitting me. I was trying to defend and reach for the door. I was screaming, “Call Tiple O.” I was getting slaps and some – yeah, he was just hitting me and – and I was just screaming for Tiple O non-stop. I wouldn’t stop, and it – it was making him angry.”

- [9] Her evidence continued that she did not consent to him pushing her or dragging her from his bedroom to hers and that she was screaming during this process. She then continued:

“What was he doing at that point?---He was just dragging me, and he was really angry, and he – he took me to the other room, and then he – he pulled me and dragged me to the other room. He locked the door, and he kept on hitting, and I kept on screaming.

What happened in the room?---He kept on hitting me, and I tried to reach for the door, and he kept on hitting me.

You tried to reach for the door?---Yes, and I also was screaming for Triple O because I wanted someone to hear.

Was the door opened or closed?---Closed and locked.”

- [10] In cross-examination there was a substantial challenge to her credit in respect of a variety of matters. In particular, she was cross-examined about her earlier statement to the police where she indicated that it was the appellant, and not her, who had put his clothes on the bed. Nevertheless, in respect of the core matters the subject of these 3 counts, she did not resile from her complaints in cross-examination.

The Son's Evidence

- [11] The son (a minor) was interviewed by police on 7 May 2024 and that interview was tendered at the trial. He also gave recorded evidence which was played to the jury. He recalled, after he and his mother returned from the temple, that he started playing on his PlayStation in the living room when he heard his mother “screaming, and [he] heard something like lots of like movement upstairs”. That movement he describes as “like lots of like footsteps”. He continued that he could hear sounds as if something was falling on the floor “like something heavy hit the floor”. Then he heard the screaming, and his mother was calling out to call triple 0. He then did so and subsequently the police arrived.

- [12] He also referred to standing with his mother subsequently trying to calm her down and observing she had cuts on her eye, shoulder and elbow and was “kind of bleeding”. He gave her water and described her as “struggling to breathe [because] she was... had lots of tears”.

The Police

- [13] One of the police officers who attended described that when they attended the house and went upstairs “there was a bedroom or a doorway on the top which suddenly opened, and a ...appeared a male person in, like, the door area or the doorframe, and a female kind of rush through”.

Photographic Evidence

- [14] Photographs of the face, elbow, cheek, neck and other various parts of the body of the complainant were tendered, indicating some form of injuries. The complainant said she had none of these prior to the events complained of.

Medical Evidence

- [15] Dr Home was working at the Royal Brisbane and Women's Hospital on 7 May and on its roster for the sexual assault examination service. He saw the complainant that

day, observed various injuries and of particular relevance, the bruising to the left eye and the swelling of the left cheek. He described these as being consistent with the “trauma of a blunt object hitting the body or the body hitting a blunt object”.

- [16] He also gave evidence of scratches or grazes, abrasions on the left shoulder and the right elbow, as well as bruising to the left knee and right chin. As to the injury to the elbow he described being dragged across the carpet as a plausible explanation for it.

The Appellant

- [17] The appellant gave evidence at the trial. In respect of all the counts his evidence diverged from that of the complainant but in respect of counts 6, 7 and 8 there is at least some degree of consistency between them.

- [18] He recalls on 6 May 2024, when he was in his bedroom, apparently the complainant appeared having returned from temple. She came to his room expressing that she believed he was being rude not coming down when she returned from temple. His evidence was that he stated that he did not realise that she had returned. After some further exchanges she left the room but 20 or 30 seconds later “she came back with more aggression”. His evidence continued:

“When you say, ‘more aggression’, what do you mean?---More aggressions like – she didn’t even say anything to me. She [indistinct] in the room and started throwing the stuff.

Started throwing stuff?---Yeah, from my [indistinct] that was my clothes and all this stuff.

Yeah. So how long was that going on for?---She kept on throwing, kept on throwing, kept on throwing.

And what did you do?---Uh – the – so then, I told her if she will not stop – so I told her, ‘What can I do now?’ She has been violent to me before as well, so she can go to the other extent as well. If I go and stop her, she might hit me, she might get physical with me. So then, I told if I – it’s better if I send her out of my room. So basically, I turned her and pushed her to out of my room. I said, ‘Don’t throw my stuff. Go out of my room. I don’t want to argue with you.’ And I - - -

What was she doing as you turned around and pushed her out of the room?---She was still throwing my stuff. She was – she kept on throwing. She didn’t stop, even for a second.

When you pushed her, what happened?---When I pushed her, she fell over. So when she fell over – so I said – uh – ‘Sorry, I don’t want to hurt you. That’s not what I mean. That’s the only thing – I want you to go out of my room. I don’t want to argue with you.’ I thought if she will be out of my room, she will cool down, she will come out of her – her current frame of mind, she will realise what she is doing. That’s what I was trying to do, but – uh – things went the other way, so when she fell, I said sorry to her, and then she went to the other room, and then I went after her to say I was sorry just to calm her down.”

- [19] Under cross-examination he accepted that when interviewed by the police he had told them, in substance, that he had prevented the complainant from then leaving the

complainant's room by placing his body between her and the door. This included the following:

"MR McMANUS: Thank you. And just to clarify your evidence before, do you accept you told – plain clothed Senior Constable Bloomfield this – it's page 33 – 'So she's trying to get through this door' – sorry. He's asked you this question. Sorry, Mr Bhairo - - -?---Yeah.

- - - 'So she's trying to get through this door to escape you.' You say, "Yeah. Yeah"?---Yes. Yes.

The officer then says, 'In your words', and you say, 'Yeah', and then he says that you said earlier, and then you give the answer, 'So, like – so she's trying to get to the door, open just, and she's trying to – no, no, just stay there. Just stay there.' And he said, 'Are you standing there with your arms down?---Yep'?---Yes.

Do you accept you said that?---Yes.

And you accept your actions were, your hands were down - - -?---Yeah.

- - - you were near the door - - -?---Yes.

- - - but your body was between her and the door?---Yes.

And three or four times she tried to go to the door?---Yes.

And you stopped her?---Uh – uh, I didn't touch her, but, uh - - -

You didn't touch her?---No.

But your body stopped her from getting to the door?---Yes. You can say that."

- [20] He did not accept that he had dragged the complainant from his room to her room, but rather she walked there of her own volition.

Grounds of Appeal

- [21] There are three grounds of appeal, namely:

"Ground 1: The verdicts of guilt on Counts 6, 7 and 8 are inconsistent with the Appellant's acquittals on Counts 1 to 5, 9 and 10 such that the verdicts of guilt are unreasonable on the trial evidence.

Ground 2: The learned Trial Judge erred in failing to leave the defences of provocation and prevention of repetition of insult on Count 7 such that the Appellant's trial miscarried.

Ground 3: The learned Trial Judge erred in failing to re-direct the jury about the acts particularised for Count 8 such that the Appellant's trial miscarried."

Ground 3

- [22] It is convenient to deal with Ground 3 first.

[23] Count 8 charged that the appellant unlawfully deprived the complainant of her personal liberty. The particulars of the charge were that the appellant detained the complainant in the bedroom by “not letting her leave the room by physical force”.

[24] In his summing up directions the primary judge stated:

“You must there be satisfied of the two critical elements.

That is, firstly, that the defendant deprived [the complainant] of her personal liberty in the bedroom.

That term ‘depriving of liberty’ simply means taking away the free choice of a person to move about as he or she wants. So that is what is meant by deprivation of liberty.

The Crown must also prove that the defendant’s conduct in doing so was unlawful.

And again, I remind you the conduct in doing so is unlawful unless it is authorised, justified or excused by law.

Here the Crown says that the defendant, in positioning himself as he did, in the context of the assault that had taken place, and in the context of their relationship, was preventing [the complainant] from leaving the room as she wanted to do so.

The defendant has accepted, through his record of interview, you may think, that he was positioned in such a way [the complainant] had indicated that she had wanted to leave the room. And it is a matter for you as to how you assess the rest of his evidence, but in essence, [his Counsel] says, but he was not depriving her of a personal liberty. His positioning was not to effect and stop her from leaving the room and at no time did he effect in stopping her from leaving the room by physicality. That is, by using some physical force to do so, whether that by his representation or by actually touching her in those circumstances.”¹

[25] It is not immediately apparent what is meant by the expression “by his representation” in the concluding line of this direction, but it is something which is an alternative to “actually touching” by the appellant. It would encompass, for example, the appellant standing in the way and resisting her attempts to push past him. Perhaps what is meant by the expression is his *presentation* in front of the door, and resisting moving when the complainant sought to leave. In the prosecutor’s address to the jury on the deprivation of liberty count he referred to the appellant’s interview with the police and reminded the jury that the appellant “had motioned what he was doing near the door” indicating that the jury had the advantage of seeing what the appellant said he was doing in preventing the complainant from leaving the room. The Crown’s case, and the complainant’s evidence were that the appellant stopped her from leaving the room by striking her, inter alia.

[26] Subsequently, the trial judge received a note from the jury seeking clarification about whether they needed to be satisfied as to the truth of the particular or merely the truth of the count in relation to counts, giving as an example count 7. In giving redirections,

¹ T2-32 lines 13 to 38.

the primary judge did not explicitly refer to count 8 but instructed the jury they had to be satisfied that the Crown had proved beyond reasonable doubt the particulars of the charge and illustrated that by reference to other counts.²

- [27] The substance of the submission by the appellant is that as the particulars referred to “physical force” the primary judge should have directed the jury that they had to be satisfied, as to actual use of physical force by the appellant on the person of the complainant to prevent the complainant from leaving her bedroom in order to sustain count 8.
- [28] I would reject this ground of appeal.
- [29] The trial judge had already given the appropriate direction initially and by reference to the expression used in the particulars. Nothing in the note or the trial judge’s further direction consequent upon the receipt of the note detracted from that earlier direction. No further redirection was sought by counsel for either party.
- [30] The jury were directed that they needed to be satisfied of the particulars. The jury had the particulars of all charges and indeed it seems that the terms of the particulars document led to the request they made in the note.
- [31] There was, in my view, no need for the trial judge, when responding to the note which used one count as an example but in relation to an issue common to all counts, to do other than direct as to the required burden and standard of proof of the particulars without doing so as to each count individually.

Inconsistent Verdicts

- [32] The principles applicable to assessing whether a verdict of guilty can be set aside as being unsafe and unreasonable on the basis of there being inconsistent acquittals are well known and it is unnecessary, for these purposes, to repeat them. They derive from, inter alia, *MacKenzie v The Queen* (1996) 190 CLR 348 as discussed in *R v Gleeson* [2026] QCA 127 at [135]-[138].
- [33] All counts relied upon the evidence of the complainant. However, there is a rational basis for differentiating between the convictions on counts 6 and 8, and all of the counts in respect of which there was an acquittal.
- [34] In respect of counts 6 and 8 the Crown was also able to point to what amount to significant concessions made by the appellant in his record of interview. There was also some support afforded by the evidence of the son referring to his mother screaming and calling out for him to dial triple 0. Additionally, as to the deprivation of liberty charge (count 8), the evidence of the police who first attended the house was that when the bedroom door was opened, they first saw the appellant and that the complainant seemed to appear from behind him to rush outside the door.
- [35] There is also a rational basis for distinguishing between the conviction on count 7 (along with counts 6 and 8) and all the other verdicts of acquittal. The photos of the grazes and abrasions to the complainant’s elbow and knee, supported materially by the evidence of Dr Home, are consistent with the complainant having been dragged across the carpet.

² T2-54 lines 30 to 37.

- [36] Counts 6, 7 and 8 represent something of a continuum of conduct and for that reason also are distinguishable from counts 1 to 5. There is also a degree of inconsistency in the appellant's case as to some aspects of the counts in respect of which he was convicted. It is his contention, as I have outlined above, that he was anxious for the complainant to leave his room and to bring to an end their confrontations. However, he then suggests that after she left, he followed her into her room and positioned himself such as to prevent her leaving. That is a circumstance which, no doubt, the jury could have regard to in determining whether to accept the complainant's evidence that her passage from the appellant's bedroom to her own was not a voluntary act as described by the appellant but rather by her being dragged by him in the way she described.
- [37] Counsel for the appellant suggests that the acquittals on counts 9 and 10 are inconsistent with the guilty verdicts on counts 6 to 8; and further must have involved a rejection of the complainant's evidence.
- [38] But as already mentioned, unlike counts 9 and 10, counts 6 and 8 are at least supported by other evidence. The medical evidence provides some support for count 7. The jury may well have had regard, when considering count 9, to the evidence given by Dr Home that the injuries to the eye and cheek of the complainant may have been the result of her striking something (possibly the door when pushed by the appellant in the act the subject of count 6) and therefore had doubt about the proof of the conduct the subject of count 9. Similarly, as to count 10, while the son's evidence was supportive of something heavy hitting the floor (possibly his mother in relation to count 6) the jury might not have found sufficient support for the strangulation component of Count 10 in his evidence about his mother finding it hard to breathe. His evidence was consistent also with her being upset and crying without pointing to some evidence of strangulation.
- [39] Accordingly, the nature of the evidence which supports counts 6 to 8 and the circumstances of the conduct the subject of those counts, are logically distinguishable from that giving rise to the acquittals on the other counts, such that in my view it cannot be concluded there is anything illogical in the conjunction of the jury having convicted on those 3 counts but acquitted on the balance. This ground of appeal fails.

Ground 2: Failure to leave defences

- [40] The final ground concerns count 7.
- [41] In relation to count 6 it was left to the jury to consider the defences of:
- (a) prevention of repetition of insult pursuant to s 270 of the *Criminal Code*;³
 - (b) the defence of provocation under s 269 (as defined in s 268) of the *Criminal Code*.⁴
- [42] The grounds of appeal do not raise any contended error in respect of those directions. Rather, the appellant submits that similar directions ought to have been made in respect of count 7.
- [43] While the Crown's evidence might have left open for the jury's consideration the reasonable hypothesis that the appellant was provoked or acting to prevent

³ T2-28 lines 4 to T2-30 line 12.

⁴ T2-24 line 34 to T2-28 line 2.

a repetition of insult when he was trying to get her out of his room, it is a different issue whether that possibility could be said to exist in relation to thereafter dragging the complainant to her room across the carpet. No such directions were sought at the trial. The evidential foundation for any such hypothesis in respect of count 7 is fragile at best. The appellant disavowed the notion that he assaulted the complainant as charged in count 7 at all, let alone while deprived of self-control by reason of the complainant's provocation. Similarly in those circumstances the appellant disavowed the possible defence of acting to prevent repetition of insult. That may not of itself mean that a direction about the exclusion of those defences should never be given. Unlike *R v Baden-Clay* (2016) 258 CLR 308 at [62], where the source of the foundation for the possible exonerating hypothesis could come only from the accused, this was a case where the Crown's case included evidence of the complainant putting his clothes on the bed and telling him to leave: see *BSJ v The State of Western Australia* [2023] WASCA 5.

- [44] It is a question of law whether the evidence could, if accepted at its highest for the appellant, lead to a verdict in the appellant's favour (in the sense of the Crown not having excluded the defence): *Pemble v The Queen* (1971) 124 CLR 107 at 118. If it passes that threshold, then it is a matter for the jury. As was recently summarised in *R v Lefoe* [2024] QCA 240 at [81]:

“The question for a trial judge in such circumstances is whether, on the version of events most favourable to the accused that was suggested by the evidence, a properly instructed jury acting reasonably might fail to be satisfied beyond reasonable doubt that the accused was not acting in circumstances giving rise to the defence. Or, to put it another way, the question for the trial judge is whether, on such a version of events such a jury could be left with a reasonable doubt as to whether the defence had been negatived.” (footnotes omitted)

- [45] The trial judge was never called upon to decide whether or not to give the direction as to these defences in relation to count 7. In my view the better view is that his Honour was right not to do so as the evidence (be it the appellant's version or that of the complainant) as to count 7 could not if accepted leave a reasonable doubt that the Crown had not excluded these two defences.
- [46] But in this case, whether or not the possible defences might be said to have been open on the evidence to permit them to be left to the jury, in this case not doing so has not had any material effect. The jury convicted the appellant on count 6. To do so they must have excluded beyond reasonable doubt the two defences presently under consideration. They would have done so in respect of a factual setting where the potential for the defences to arise was substantially greater for count 6 than in respect of count 7. By the time the conduct the subject of count 7 occurred, the complainant was outside or near to outside the appellant's room, on the floor and no longer throwing things around his room. There is no evidence from the appellant that in any way suggested he was at that time being provoked, that insults threatened to be continued or that he had been deprived of his self-control but more importantly no possible foundation to any escalation of the insults or provocation beyond the events relevant to the potential availability of the defences for count 6.
- [47] If there be an error, it is not one which “was material in the sense that the error or irregularity could realistically have affected the reasoning of the jury to its verdict”: *Brawn v The King* (2025) 99 ALJR 872 at [3].

[48] This ground of appeal fails.

Conclusion

[49] For these reasons, in my opinion, the appropriate order is that the appeal is dismissed.

[50] **SMITH J:** I agree with Doyle JA.