# SUPREME COURT OF THE AUSTRALIAN CAPITAL TERRITORY

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| **Case Title:** | **Hansen v Johnson** |
| **Citation:** | **[2026] ACTSC 16** |
| **Hearing Date:** | 19 November 2025 |
| **Decision Date:** | 4 February 2026 |
| **Before:** | Muller AJ |
| **Decision:** | The appeal is dismissed. |
| **Catchwords:** | **APPEAL** – CRIMINAL LAW – Appeal against conviction – family violence - inadequate reasons of the magistrate – mistake – unchallenged evidence of good character of the respondent – good character evidence – no substantial miscarriage of justice – residual discretion – appeal dismissed |
| **Legislation Cited:** | *Crimes Act 1900* (ACT), ss 28(2)(a), 60(1)<br>*Evidence Act 2011* (ACT), s 97 |
| **Cases Cited:** | *Bourke v Styche* [2024] ACTSC 62<br>*Druett v Steel* [2025] ACTSC 538<br>*Harlovich v Sebbens* [2023] ACTSCFC 3<br>*Johnson v Hansen* [2024] ACTSC 353<br>*Melbourne v The Queen* [1999] HCA 32; 198 CLR 1<br>*Saunders v King* (ACT Supreme Court, Blackburn J, 16 September 1974)<br>*Soulemezis v Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247 |
| **Parties:** | Chloe Hansen (Appellant)<br>Jess Johnson (Respondent) |
| **Representation:** | **Counsel**<br>M Howe (Appellant)<br>S Pararajasingam SC with G Lewer (Respondent)<br><br>**Solicitors**<br>ACT Director of Public Prosecutions (Appellant)<br>Adrian McKenna of Hugo Law Group (Respondent) |
| **File Number:** | SCA 25 of 2025 |

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| **Decision Under Appeal:** | Court: | ACT Magistrates Court |
| | Before: | Magistrate Lawton |
| | Date of Decision: | 24 June 2025 |
| | Case Title: | Hansen v Johnson |
| | Court File Number: | CAN 10638 of 2022<br>CAN 10639 of 2022<br>CAN 10640 of 2022 |

**MULLER AJ:**

## Introduction

1. The respondent to this appeal, Jess Johnson, entered pleas of not guilty in the Magistrates Court to the following charges:

   (a) Two counts of an act endangering health (choke, strangle or suffocate) contrary to s 28(2)(a) of the *Crimes Act 1900* (ACT). Both charges relate to an incident that occurred on 9 October 2022.

   (b) A single count of an act of indecency on the complainant, without her consent and being reckless as to whether she had consented, contrary to s 60(1) of the *Crimes Act.* This charge relates to an incident that occurred between 4 and 9 September 2022.

2. On 24 June 2025, following a four-day hearing from 20 to 23 May 2025, Magistrate Lawton dismissed all of the charges and gave reasons for doing so.

3. A notice of appeal against the verdicts of not guilty for all of the offences was lodged on 22 July 2025. The grounds of appeal are:

   (a) The reasons of the magistrate were inadequate; and

   (b) The magistrate erred when finding that the evidence of the respondent's good character was unchallenged.

4. As I outlined in the matter of *Druett v Steel* [2025] ACTSC 538 at [5]-[8], the basic principles of appeal in this jurisdiction are as follows:

> 5. The jurisdiction of the Supreme Court to hear and determine appeals of this type from decisions of the Magistrates Court arises under ss 207 and 208 of the *Magistrates Court 1930* (ACT).
>
> 6. The matters to which this court must have regard on appeal are set out in s 214:
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> **214 Appeals in cases other than civil cases**
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> (1) This section applies to an appeal mentioned in section 208 (Appeals to which div 3.10.2 applies).
>
> (2) In an appeal to which this section applies, the Supreme Court must have regard to the evidence given in the proceeding out of which the appeal arose, and has power to draw inferences of fact.
>
> (3) In an appeal to which this section applies, the Supreme Court must—
>
> (a) if it considers it necessary or expedient to do so in the interests of justice—
>
> (i) order the production of a document or anything else that was an exhibit in, or was otherwise connected with, the proceeding out of which the

appeal arose and that appears to it to be necessary to produce for deciding the appeal; and

(ii) order any person who was, or would have been if the person had been called, a compellable witness in the proceeding to attend for examination before the Supreme Court; and

(iii) receive the evidence, if tendered, of any witness; and

(b) receive evidence with the consent of the parties to the appeal.

(4) If evidence is tendered in an appeal to which this section applies, the Supreme Court must, unless satisfied that the evidence would not afford any ground for allowing the appeal, receive the evidence if—

(a) it appears to the Supreme Court that the evidence is likely to be credible and would have been admissible in the proceeding out of the which the appeal arose on an issue relevant to the appeal; and

(b) the Supreme Court is satisfied that the evidence was not adduced in the proceeding and there is a reasonable explanation for the failure to adduce it.

7. Pursuant to s 218, the court may make the following orders:

**218 Orders by Supreme Court on appeals**

(1) On an appeal to which this division applies, the Supreme Court may—

(a) confirm, reverse or vary the conviction, order, sentence, penalty or decision appealed from; or

(b) give the judgment, or make the order, that, in all the circumstances, it considers appropriate, or refuse to make an order; or

(c) set aside the conviction, order, sentence, penalty or decision appealed from, in whole or in part, and remit the proceeding to the Magistrates Court for further hearing and decision, subject to the directions the Supreme Court considers appropriate.

(2) A judgment or order of the Supreme Court under subsection (1) (a) or (b) has effect as if it were a decision of the Magistrates Court and may be enforced by the Magistrates Court accordingly.

8. The nature of an appeal under s 214 is by way of rehearing. As was summarised in *Alexander v Bakes* [2023] ACTCA 49; 21 ACTLR 27 (*Alexander v Bakes*) at [13], the court must undertake a real review of the evidence and the decision in the court below, while giving due deference to the advantages enjoyed by the trier of fact at first instance in hearing and seeing witnesses give evidence. In that regard, the appellate court must observe the 'natural limitations' of proceeding on the record: *Fox v Percy* [2003] HCA 22; 214 CLR 118 at [23]. The onus is on the appellant to demonstrate legal, factual or discretionary error on the part of the Magistrate: *Alexander v Bakes* at [13]-[23]

## Procedural history

5. The matter has a significant procedural history that warrants review before the relevant events on which the charges arise are considered.

6. The respondent was initially brought before the Magistrates Court for trial on these charges on 24 to 26 July 2023. Closing submissions were made in that matter on 30

August 2023. On 4 October 2023, the presiding magistrate found the respondent guilty of each of the three offences.

7. The respondent appealed those orders and the appeal to this Court was heard by Mossop J on 18 June 2024 and determined on 6 November 2024. Mossop J allowed the appeal and remitted the matter to the Magistrates Court for further hearing: see *Johnson v Hansen* [2024] ACTSC 353.

8. The first appeal succeeded on the single ground that the hearing before the magistrate at first instance miscarried as a result of the failure of the now respondent's counsel to adduce evidence and make submissions as to the significance of the respondent's good character. The appeal proceeded on the basis of an acceptance that there was a material irregularity in the management of the good character evidence, such that the issue for determination was whether there was a significant possibility that the material irregularity affected the outcome of the trial. Mossop J accepted that a significant possibility was established. His Honour stated at [66]:

> Even having regard to the findings made by the Magistrate and his reasons for rejecting the evidence given by the appellant, had the character evidence been admitted, there is a significant possibility that it would have affected the outcome of the case. That is particularly so in circumstances where the factual differences as to what occurred between the complainant and appellant were relatively modest and where character evidence had the potential to bolster the appellant's explanation of the otherwise significant admissions, most notably in the Everyman application.

9. The further hearing in the Magistrates Court before Magistrate Lawton is now the subject of this appeal.

## The events leading to the charges

10. The respondent and the complainant had been in an intimate relationship for a period of almost 10 years at the time of the alleged offending. The allegations relate to three separate incidents, the first of which occurred between 4 and 9 September 2022, and the second and third of which occurred on 9 October 2022.

11. The prosecution case as to each of the three incidents is, in summary form, set out below.

12. As to the first incident:

    (a) The complainant and respondent had a verbal argument at their place of residence. At the time the complainant was sitting on the ground beside the respondent, who was sitting on a desk chair.

    (b) The argument escalated to a point where the respondent pushed the complainant onto the ground on her back, flipped her over and commenced taking down her

pants. The complainant then pulled her pants back up, managing to get herself onto her back.

(c) The respondent continued to try and pull the complainant's pants down whilst making comments to the effect that "sex would fix everything".

(d) While the complainant continued to protest, the respondent pulled down her shirt, kissed underneath her neck, touched her vagina through her clothes and kissed her nipples.

(e) In the days following, the complainant called police in relation to the incident, but decided not to press a complaint at that time.

13. The charge of committing an act of indecency arose from this incident.

14. As to the second incident:

(a) The respondent arrived at the couple's place of residence displaying behaviours the complainant considered consistent with intoxication, and a verbal argument ensued between the complainant and respondent.

(b) The respondent tried to walk "through" the complainant, and in response she pushed him.

(c) The respondent then placed his hands around the complainant's neck, causing her to fall backwards into a suitcase which was open inside a cupboard. The respondent maintained his hands around the complainant's neck whilst saying words to the effect of "fuck you, [complainant]".

15. The first charge of committing an act endangering health (choke, strangle or suffocate) arose from this incident.

16. As to the third incident:

(a) It occurred shortly after the second incident.

(b) The respondent threated to strike the complainant, grabbing her by the shirt and raising his fist before commencing to strike his own head against the ground.

(c) Later in the evening as the conflict continued, the complainant asked the respondent whether he was going to choke her again, at which point he damaged a television in the premises.

(d) The respondent then placed his hands around her neck and squeezed while saying words to the effect of "I'm going to do it. I'm fucking going to do it".

(e) Shortly after, the respondent apologised to the complainant for his actions.

17. The second charge of committing an act endangering health (choke, strangle or suffocate) arose from this incident.

**The evidence**

18. As will be apparent from the factual circumstances described above, the prosecution case in respect of all three incidents was based primarily on the evidence of the complainant, supported by corroborative evidence of complaint following the incidents. In relation to the second and third incidents, the prosecution also placed reliance on admissions from the respondent. The admissions can be placed into three distinct categories:

    (a) The respondent's silence in response to the allegations made by the complainant regarding the choke.

    (b) The respondent's actions in apologising to the complainant for his conduct, including in response to allegations by the complainant in respect of the choke allegation.

    (c) A referral form for a men's behaviour change program called 'EveryMan', within which the respondent provided the following details:

> I am currently in a relationship where I am perpetrating domestic violence of an emotional and recently physical nature; on my partner of 9 years. I am in the process of being served with a mandatory FVO, to my knowledge this does not require me to attend such a program, but I wish to so this can stop. Most recent episode was a strangulation and property damage, prior to this it has been predominantly emotional abuse. I am worried about the recent escalation and its correlation my deteriorating mental health, of which I am separately seeking care for. My partner and I are currently on a break due to this event, with likelihood of the relationship ending. I want to attend such a program for the betterment of myself and potentially reigniting relationship. I take full accountability for what I am doing. I want to learn more about what I am doing, how to change my thinking and anger management in the program.

19. A recording of the complainant's evidence from the initial trial was played to the Court at the rehearing of the matter. The Court also had the benefit of the recording of the Family Violence Evidence-in-Chief interview dated 29 October 2025.

**The magistrate's reasons**

20. At the conclusion of the evidence his Honour reserved his decision and delivered it orally approximately four weeks later, on 24 June 2025. After giving himself a *Liberato* direction, the magistrate commenced his analysis of the evidence at Transcript, 24 June 2025 from 4.15. He identified the substance of the competing factual allegations of the

complainant and respondent in respect of the two separate occasions giving rise to the three alleged offences, noting that each occasion involved a few minutes of interaction. His Honour noted the strong corroboration supporting the complainant's account in respect of the choking offences, in the nature of reports made to friends and family and in the form of the text message exchanges between the complainant and the respondent following the subject events. In relation to the content of the text messages, his Honour noted the respondent did not specifically deny that he had strangled the complainant. The magistrate also made reference to the EveryMan form in which the respondent had stated that he perpetrated domestic violence, including strangulation.

21. As to the respondent's evidence at trial, the magistrate noted the assertion of a pattern of behaviour that included the complainant physically blocking the respondent from leaving premises from time to time. The respondent's evidence that in verbal arguments he would often capitulate to appease the complainant was noted, and recorded as having relevance to his failure to deny the allegations of strangling and sexual assault in the text and email communications between the two subsequently.

22. The magistrate continued the task of weighing the evidence before him (Transcript, 24 June 2025, at 5.3) and his Honour's analysis is summarised below:

    (a) The respondent made an admission to the complainant of sexual assault in the presence of his father, but that admission was immediately qualified or retracted when the complainant was no longer present.

    (b) Although the completion of the EveryMan form as a means of appeasing the complainant appeared somewhat bizarre, so did the respondent's behaviour in head-butting the floor and damaging a television.

    (c) The respondent's admission that he twice during the course of the second episode pushed the complainant with some force was a significant admission. However, the case against him was that he had strangled the complainant.

    (d) The respondent had no prior convictions and limited interactions with the criminal justice system. The character evidence he relied upon attested to him not being a person prone to violence. That evidence not having been challenged, it was accepted that the respondent was a person of good character.

    (e) Evidence of good character may lead to reasoning that such a person is unlikely to have committed the offences charged. It can also be used to support the person's credibility.

(f) Accepting that both key witnesses are credible and that their evidence does not significantly disagree other than in some critical respects, the objective evidence such as recordings or conversations takes on additional importance.

(g) One recording of significance is that contained in Exhibit 20, extending over 1 hour and 15 minutes, made on 28 October 2022 and during which the complainant was aware that she was being recorded. The recording covers a period from when the complainant collects the respondent from Woden, drives him back to the house where they are house sitting and ends when he leaves the house and is collected by his father. In respect of that recording his Honour stated:

> The complainant is aware she is being recorded and at a couple of points in time asks to see the defendant's phone. Her behaviour in that recording is, for want of a better word, extraordinary. I am not going to list what she says and does but I will remark that she engages in many behaviours that would objectively be described as domestic violence including coercive control. Her behaviour in that recording is at many times irrational and disturbing. Significantly at one point the defendant attempts to deny strangling the complainant, but he [sic] shouts him down saying 'You did. You did.' That recording supports the other evidence including that given by character witnesses of the toxic nature of the relationship.

(h) The recording supports the respondent's account that he did not deny allegations made by the complainant as it would likely cause an escalation in her behaviour. It also raises concern about the reliability of the complainant's account (as opposed to the genuineness of the account).

(i) The description of the relationship between the complainant and respondent as co-dependent was accurate.

(j) Balanced against the complainant having made a complaint shortly after the incidents consistent with her allegations, is the evidence of the defendant, a person accepted as being of good character, essentially admitting all of the allegations in respect of the second episode, including inappropriate pushing which does not form part of the charge, but denying the strangling.

23. The magistrate was therefore unable to be satisfied beyond reasonable doubt that the prosecution case was made out. Applying *Liberato*, his Honour had difficulty in accepting the respondent's account of both incidents, but thought that account may be true.

**Ground 1: Inadequate reasons**

24. The appellant asserts that the decision in law should not have been made because the reasons of the magistrate were inadequate.

*Appellant's submissions*

25. The appellant referred to the decision of McWilliam J in *Bourke v Styche* [2024] ACTSC 6,2 citing in particular the passage at [71]-[76].

26. The appellant's primary complaint is that the magistrate failed to expose the reasoning process in reaching his ultimate decision. As a component of that complaint, the appellant contends that a number of critical factual disputes in relation to the evidence, including the complainant's account of things that were said or done during each episode, were not resolved. A statement to the effect that there was doubt about the reliability of the complainant's evidence is not a satisfactory answer to this complaint, in circumstances where there is no explanation offered as to why such doubt existed. The appellant contends that such an explanation was required to enable the appellant to understand why the case was unsuccessful.

27. In making that argument, the appellant notes that the magistrate assessed the complainant to be a credible witness and was not critical about the way in which she gave her evidence. There was, for example, no indication that she was not believable or was prone to exaggeration. Yet implicit in the magistrate's decision is the suggestion that within a day of the second episode, the complainant mistakenly held a genuine belief that she had been choked.

28. Secondly, the appellant relies upon the strong corroborative evidence, both in the form of contemporaneous complaint and actual evidence of swelling, marks and bruising observed on the complainant's neck when she presented to the hospital on the following day. The appellant identifies the medical evidence as an "inconvenient fact" and says that the appellant was entitled to know what the magistrate made of that and other inconvenient facts.

29. Thirdly, the appellant contends that the magistrate failed to adequately resolve the status of a series of admissions made by the respondent, including the "EveryMan" admission, and he failed to address at all the admission asserted to have been made during a conversation that occurred on the day after the second episode, as follows:

> *Complainant*: At this point you might accidentally kill me or cause brain damage, it's not about cutting off my air supply as much as it [sic] squashing my neck and preventing oxygenated blood from going to my brain, I have Non-fatal strangulation symptoms.
>
> *Respondent*: Yeah well I'll never do that again
>
> *Respondent*: I'm very sorry and it's fuck d [sic]
>
> (Footnotes omitted.)

30. That exchange appears in Exhibit 11 and is in the nature of a text message exchange that began in the morning of 10 October 2022 and continued into the early afternoon. That message was put to the respondent in the course of his cross examination as recorded in the Transcript, 22 May 2025 at 149.28–150.37:

> *Mr McLaughlin*: Do you recall receiving on the morning after the incident – sorry, early in the afternoon about 1:30 or thereabouts:
>
> > At this point you may – might accidentally kill me or cause me brain damage. Its not about cutting off my air supply as much as it is squashing my neck and preventing oxygenated blood from going to my brain. I have non-fatal strangulation symptoms.
>
> Do you recall that? - - - I recall something like that. I don't have it in front of me. Or do I?
>
> *His Honour*: Its in Exhibit 11.
>
> *Mr McLaughlin*: Exhibit 11, yes. You see that, sir? Page 2 of Exhibit 11? - - - Yes, yes.
>
> So prior to receiving that message, were you aware of anything beyond a sore neck that It may be a suggestion of strangulation or is that the first you heard of it? - - - That is – I'm just trying to – is this before or this is after? That's before. Sorry, what was your question?
>
> So is that the first time you were notified by [complainant's name redacted] that there was an allegation of strangulation? - - - In this exchange.
>
> I'll come back to the question again, sir. When was the first time [Complainant's name redacted] suggested that you had – it's pretty general – applied force to her neck by your hands or by some form of strangulation, choking, suffocating action? - - The – those terms, there's – one of those terms is in here, the text.
>
> And is it to say that before this text, any reference to sore neck was so general you thought it was from hitting it against a wall or similar? - - - It was in reference to outcome of me pushing her.
>
> So this message that you have in front of you now in Exhibit 11, would therefore be the first time there was a suggestion of strangulation? - - - Yes, I think so.
>
> Now, having been involved in a violent altercation the night before, your response to this being raised with you was, 'Yeah. Well, I'll never do that again'? - - - Yes.
>
> Not, 'What are you talking about'? - - - No, I didn't say that.
>
> Not seeking any explanation of what may have happened? - - - Not in that moment, no.
>
> And instead you continued, 'I'm very sorry and it's fucked'? - - - Yes.
>
> And your response is to say it won't happen again and apologise? - - - That's my response to that, yes.
>
> So the reason you said, 'Yeah, well, I'll never do that again', is because you were trying to convey to [complainant's name redacted] that you would not choke her again, isn't it? - - - I just was trying to convey that I'd never physically do anything to her again.

31. The appellant contends that the usual allowances that may apply in respect of a paucity of reasons in an ex-tempore decision do not have application in this case where the magistrate delivered his decision, albeit orally, approximately one month after reserving. There is some acknowledgment that in the context of the time pressures applying to magistrates, those reasons need not be lengthy.

32. Finally, as to the recording, which is Exhibit 20, the appellant contends that little significance should be attached to it given that it records events occurring almost two months after the first episode and nearly three weeks after the second episode. The appellant argues that the conduct engaged in at that time could not have informed the possibility of whether admissions made at an earlier time were true admissions or not. Additionally, the appellant points to the fact that the events recorded took place at a time after the complainant had already made a complaint concerning the alleged conduct (even though it closely coincided with the timing of the complainant's evidence-in-chief interview).

33. The appellant says that in circumstances where there was strong corroborative evidence supporting the complainant's account, it was incumbent upon the magistrate to explain why he had doubts about the reliability of that account.

*Respondent's submissions*

34. The respondent highlights the nature of the obligation on the decision maker to adequately expose the reasoning process. Adequacy of reasons is informed by the nature of the jurisdiction the court is exercising and the particular matter that is the subject of the decision. At issue is the substance of the reasons, not the quality of the exposition.

35. The respondent contends that the reasons given by the magistrate, "go directly to the heart of the case and deal squarely with the issues joined between the parties at trial". In short, it is submitted that the magistrate entertained a reasonable doubt in relation to each of the offences and explained why.

36. Critical in the reasoning process was the evidence given by the respondent. His Honour explained why he was unable to reject that evidence, dealing both with the character evidence and the evidence concerning the nature of the relationship between the two. The magistrate having reached that view, the respondent submits that there was no additional requirement to deal with each of the multitude of disputed factual matters that arose, particularly where the prosecution led extensive evidence about the circumstances of the relationship between complainant and respondent over a number of years.

37. The respondents submits that the magistrate's remarks do not demonstrate a failure to have regard to any relevant specific matter. His Honour acknowledged the strongly corroborative evidence both in terms of complaint and in the form of the multitude of alleged admissions made by the respondent. However, those matters were balanced with the evidence of the respondent in his denials and in his explanation for the admissions that were made.

38. In responding to the appellant's submissions, the respondent raises, in particular, the following matters:

    (a) An absence of conclusive findings about disputed factual matters is entirely appropriate where the court is called upon to consider whether the prosecution discharged its onus to prove the relevant elements beyond a reasonable doubt.

    (b) Whether delivered on an ex-tempore basis or otherwise, the reasons of the magistrate must be read fairly as a whole and not painstakingly picked over.

    (c) The expression of doubt as to the reliability of the complainant's evidence was explained by the conduct she displayed as recorded in Exhibit 20. The recording was demonstrative of why the magistrate had a doubt about the reliability of the complainant's account and why he considered the complainant might believe what she said happened. It also provided the basis for the submissions made on behalf of the respondent at hearing as to:

        (i) the divide between the language of the complainant and what was apparently occurring during the course of the recording, including apparently inappropriate use of language about violence and abuse, and;

        (ii) the relationship dynamic between the two, where the respondent was repeatedly pressed to make admissions, raising the possibility that the admissions relied upon by the prosecution were themselves unreliable because of the pressure that had been brought to bear upon the respondent.

    (d) The respondent addresses the appellant's complaint concerning the efficacy of the recording in the following ways:

        (i) It is a complaint about the manner of the reasoning process and the probative force to be given to a particular piece of evidence. That is not relevant to the ground of appeal as advanced which is concerned with a failure to give reasons as opposed to a failure in the reasoning process.

        (ii) The appellant overlooks its relevance in demonstrating a pattern of behaviour between the two whereby the respondent was overborne by the complainant,

thus raising the possibility that he may have acquiesced to accusations as a means of appeasement.

(iii) The timing of the recording was of little moment. It remains as a demonstration of the complainant's unreliability both in terms of what she had alleged before and what she asserted thereafter when she attended court and gave evidence.

(iv) Whether or not the evidence could have been relied upon as tendency evidence avoids the fact that it was used in response to extensive evidence relied upon by the appellant as context evidence in respect of the relationship between the two. The evidence was tendered in response to the appellant's context evidence. In this appeal the tendency question is inconsequential; no formal application was made, and no notice was given per s 97 of the *Evidence Act 2011* (ACT).

(v) No objection was taken to its use at hearing, and its content was dealt with squarely by the prosecution in the trial at first instance.

(vi) As the magistrate observed, the complainant's conduct in the course of the recording was "irrational and disturbing".

(e) The corroborative complaint evidence was appropriately weighed by the magistrate, noting that it ultimately depended upon the reliability of the complainant who was the source of the complaint.

(f) The magistrate grappled appropriately with the admission evidence and its reliability. The respondent submits, "The effect of all this evidence was that the probative force of the admissions in the prosecution case was diminished when it was reasonably possible that they were statements to placate the complainant rather than true confessions of guilt."

(g) While there was no clear finding as to the reliability or otherwise of the admissions, the court was not required to make a finding in those terms. Rather, the magistrate did as required by considering the whole of the evidence and ultimately concluding that, for the reasons given, he was unable to determine just where the truth lay.

(h) As this ground is limited to the adequacy of the magistrate's reasons, a fair reading of them demonstrates that they are transparently exposed, albeit in short form.

*Relevant principles*

39. An appeal on the grounds of inadequate reasons given for a decision by a magistrate was recently considered by McWilliam J in *Bourke v Styche*. Her Honour helpfully summarised the relevant principles at [71] to [76]:

> 71. The relative test of "adequacy" depends on the nature of the issues in the case: *DL* at [33]. The adequacy of reasons given in a judge-alone trial will be a question of degree, depending on the circumstances of the case: *R v BK* [2022] NSWCCA 51 (BK) at [270] (and the authorities there-cited).
>
> 72. Consideration was given to what may constitute the minimum standard for "adequate" reasons in the Magistrates Court by Refshauge J in *O'Connell v McMennemin* [2014] ACTSC 112 (*O'Connell*) at [70]–[80]. His Honour found there is an obligation on a magistrate, as part of the exercise of his or her judicial office, to adequately state the findings of fact and reasons for decision, for the purpose of enabling a proper understanding of the basis upon which the findings of guilt were reached (citing *Pettit* at 382).
>
> 73. In a summary jurisdiction, the reasons must articulate the essential ground or grounds on which the decision rests, although a detailed explanation is not always required: *O'Connell* at [77]. Similarly in *Greenwood v Barlee* [2018] ACTSC 46 at [4] , Mossop J stated:
>
> > The reasons given by the magistrate need to be understood having regard to the realities of the work of that court and the pressures under which magistrates operate. Regard must be had to the substance of the reasons: *Acuthan v Coates* (1986) 6 NSWLR 472 at 479 ; *DPP (NSW) v Illawarra Cashmart Pty Ltd* [2006] NSWSC 343; 67 NSWLR 402 at [15].
>
> 74. Three further points are relevant to the arguments here. First, in *Garay*, McCallum CJ (with whom Collier J agreed) stated at [138] (emphasis added):
>
> > It will be a rare case in which the adequacy of the reasons can be determined by reference to the structure of the judgment alone. **The provision is concerned not with the quality of the writing but with the quality of the reasoning, which must necessarily be informed by the issues in the case**. The statute does not impose a requirement that the judgment be reasoned beautifully; only that the reasoning process be exposed. It is trite that, in determining whether that has occurred, **the appellate court must read the judgment fairly, as a whole.**
>
> 75. Second, when assessing the quality of the reasoning and whether it meets a minimum acceptable level, it is important not to conflate inadequate reasons with inadequate reasoning (which is an error more in the nature of the trial judge's reasoning not supporting the verdict returned). Inadequate reasons deal with where it is not possible to discern how the decision-maker rationally arrived at the determinative conclusions. Inadequate reasoning is where the reasoning is exposed, but flawed: see the discussion in *JGS* at [205]-[209] and *Garay* at [142]. Admittedly, the line between the two may be faint (an observation also made in cases such as *R v Sexton* [2018] SASCFC 28 at [178] ).
>
> 76. Third, as to what constitutes "exposing" the reasons, the following passage from *Macks v Viscariello* [2017] SASCFC 172; 130 SASR 1 at [523] aptly describes the requirement:
>
> > Reasons are not necessarily adequate because they reveal a chain of reasoning leading to a conclusion. A conclusion is not to be drawn from a collection of

> convenient facts that lead inevitably to that particular result. What is required is a careful assessment of all of the relevant facts, and where necessary, an explanation as to how the "inconvenient" facts can be put to one side or given little weight. As has often been said a fact does not cease to exist because it is ignored.
>
> (Emphasis in original.)

40. The question to be determined in respect of this ground is whether reading the judgment, fairly and as a whole the magistrate's reasoning process is exposed.

41. I am satisfied that the reasoning process is adequately exposed. The area of dispute in relation to the critical factual matters was of quite narrow compass. There was a high level of agreement between the appellant and the respondent as to the factual circumstances of each of the episodes. The magistrate was clearly aware of and addressed those points of factual difference in his decision. He articulated the factual differences that were the central issue in the case in relation to each of the episodes and recognised that there was not a reasoning process available to him that enabled him to accept both versions of events in full. He then embarked on a process of analysing the evidence, including the strongly corroborative evidence relied upon by the appellant. It is the case that the magistrate does not in that reasoning process resolve each and every point of factual contention between the parties, but it is clear that he gives consideration to the various pieces of evidence and engages in a weighing process in relation to them. It is also clear from his articulation of that analysis that the magistrate is troubled about aspects of both the complainant's evidence and the respondent's evidence.

42. Ultimately, having reached the view that he is unable to accept in full the version of events presented by either the complainant or the respondent, the magistrate expresses doubt about the reliability of the complainant's evidence. Central to the complaint made by the appellant in this appeal is that there is no, or insufficient, explanation offered as to why such doubt existed. I accept, as the appellant contends, that such an explanation was required, but I do not accept the submission that no explanation was offered.

43. The explanation lies in the strong concern expressed by the magistrate regarding the behaviour of the complainant in the course of the recording that is Exhibit 20. He notes that the recording is made with her knowledge. He describes her behaviour in the recorded episode as extraordinary, and at many times irrational and disturbing. The magistrate accepted the recording as supportive of the respondent's account that he did not deny the allegations made by the complainant as it would likely cause an escalation in her behaviour.

44. It is clear, viewing the judgment as a whole, that the behaviour demonstrated in the subject recording was the source of the magistrate's doubt about the reliability of the

complainant's evidence. That expression of doubt was in no way inconsistent with his finding elsewhere that she was a credible witness. The magistrate made clear that he accepted her genuine belief in the version of events that she presented, but he had reason to doubt the reliability of that version of events because of the behaviours that she exhibited in the subject recording.

45. I do not accept the appellant's contention that little weight can be given to the recording in view of its timing, that is, a recording of events occurring almost three weeks after the second episode. It is a recording of a conversation that took place between complainant and respondent on the evening prior to the complainant completing her evidence-in-chief interview. That interview formed a critical component of the appellant's evidence in the case. In any event I accept, as the respondent submits, that a ground based on the sufficiency of the evidence underlying the magistrate's reasons is beyond the scope of this appeal.

46. I must also address the appellant's contention that the magistrate failed to resolve the status of the various admissions made by the respondent from time to time, including the "EveryMan" admission, and perhaps most importantly the asserted admission in the text message exchange that is Exhibit 1, forming part of an exchange occurring on the day after the second episode.

47. The magistrate dealt with the admissions by expressly referencing the following matters:

    (a) The strong corroboration supporting the complainant's account, particularly in relation to the second episode.

    (b) The demonstrated failure on the part of the respondent to specifically deny the allegations made against him, including the allegation that he had strangled the complainant (I take this to be a specific reference to the category of evidence that included the text message exchange in Exhibit 5 and Exhibit 11).

    (c) Relevant to the failure to deny allegations of strangling and sexually assaulting the complainant in texts and emails between them, the respondent's habit of capitulating in verbal arguments to appease the complainant.

    (d) The respondent's denial to his father of assaulting the complainant shortly after admitting the same conduct in her presence.

    (e) The respondent's assertion that the EveryMan form was completed to appease the complainant.

    (f) His acceptance of the respondent as a person of good character.

(g) The importance of documentary evidence where both the complainant and the respondent present credibly.

(h) The significance of the Exhibit 20 recording and its corroboration of the respondent's assertion that he did not deny allegations made by the complainant as it would likely cause an escalation in her behaviour.

48. I accept the respondent's submission that the substance of the decision was that the probative force of the admissions relied upon was reduced, given the magistrate's acceptance of the reasonable possibility that the statements were made to placate the complainant rather than being statements that were true confessions of guilt.

49. The magistrate received detailed submissions from both counsel at to the significance to be placed on the evidence of physical injury. There can be no doubt that it was evidence to which he was specifically taken and it forms part of the factual evidence that is not addressed in isolation in the magistrate's decision. I do not accept that in reading the decision as a whole, it was evidence that it was necessary to address separately to enable a proper understanding of the basis for the magistrates' decision to find the respondent not guilty. The basis is encapsulated in the magistrate's statement as follows:

> When I look at all of the evidence, I am not able to be satisfied beyond reasonable doubt of the prosecution case as alleged. To be clear I have some difficulty in accepting the defendant's account of both incidents that ground the charges but think that it might be true. In that regard I've taken into account his good character and the evidence about the nature of their relationship.

50. This ground is not made out.

**Ground 2: Good character evidence.**

51. The appellant asserts error on the part of the magistrate in finding that the evidence of the respondent's good character was unchallenged.

52. It will be of assistance to extract the relevant portion of his Honour's reasons, contained in Transcript, 24 June 2025 at 5.23

> The defendant called character evidence. He has no prior convictions and gave evidence of limited interactions with the criminal justice system. The character evidence that was called attested to him not being a person prone to violence. It also attested to the nature of the relationship between the complainant and the defendant. Having called evidence to establish that he is a person of good character, that evidence was not challenged by the prosecution, therefore I accept that fact that the person is of good character.
>
> In particular the prosecution cross-examined the defendant about using strong language - pejorative language to criticise the complainant but I accepted that that was in the context of an incident that had occurred earlier in the year of 2023. It was isolated in as much as the abuse that was put to the character witnesses was specific to that one occasion. I accept

> that the fact that the defendant is a person of good character. The law provides that a factfinder is entitled to take evidence of a defendant's good character into account in favour of them on the question of whether the prosecution has proved the defendant's guilt beyond reasonable doubt.
>
> It is only one of the many factors which I am to take into account when 5 [sic] determining whether or not I'm satisfied beyond reasonable doubt of the guilt of the defendant.

*Appellant's submissions*

53. As is apparent from the passage extracted above, although describing the respondent's character as not subject to challenge, the magistrate expressly addressed an aspect of the cross-examination of the respondent in terms of the use of strong language by him in criticising the complainant. Having identified that attack, the magistrate noted that it was limited to a particular episode early in 2023. After addressing the issue, the magistrate reiterated his conclusion that the respondent was a person of good character.

54. The appellant points to the fact of other challenges made in respect of the respondent's character in terms of whether he was being truthful and candid. The appellant submits that because there was no specific mention of that challenge in his Honour's reasons, the magistrate erroneously considered the challenge to character to be limited to the issue of pejorative language. The relevant portion of the transcript (Transcript, 22 May 2025 at 192.15–45) evidencing the other challenges to the respondent's good character are reproduced below.

> You are aware that he has broken his hand before by punching a wall in rage?---I know a wall was broken, but he also – I also know that he covered up for a lot of things [complainant's name redacted] did.
>
> Well, I didn't ask you about that, sir?---So I don't - I don't know who broke the wall. I don't know who broke – who punched the wall.
>
> Okay. So he hasn't told you he has broken a hand by punching an item?---Yes. He told me he did. He also told me that he ran my car and broke a wheel one time but - - -
>
> Well, I haven't asked you about - - ?----- - - and then told me it was [complainant's name redacted]
>
> So what you are saying is your son regularly lies to you?---what I'm saying is my son was very loyal to [complainant's name redacted]
>
> Sir, during his relationship with [complainant's name redacted], did your son lie to you?---Not that I know of.
>
> Well, did he tell you something about a car and say it was him when it was [complainant's name redacted]?---Well, sure. Many years later - -
>
> Is that a lie?---Many years later, he said he was covering up for [complainant's name redacted].

So did he tell you a lie?---I guess he did that night, yes.

Did he tell you lies about how he may have broken his hand?---I – I guess not. I don't know.

So you are unable to tell when your son is lying?---I can only take him at face value when he says things.

55. The following portions at Transcript, 22 May 2025 at 214.24–215.20 are also relevant:

Now, sir, you described Jessie as, a number of things, but kind and compassionate?--- Yes.

Have you ever seen Jessie lash out at an object in anger or frustration?---Lash out at an object?

Yes?---No, not to my recollection

Do you recall a time some years ago where he had a broken hand?---Yes.

What was your recollection of what that was from or what you were told that was from?---I can't recall what I was told that was from at the time, and to be honest, I can't even remember the period that it was from, but I didn't think it was anything of significance at the time.

So then please correct me if I'm wrong?---Yes.

A good friend of yours has a broken hand?---Yes.

That's something you were going to notice?---Yes. Again - - -

Yes, and you remember him having a broken hand?---Again, this was during the period where Jessie and I had become friends again but it was – we were not hanging out as much as we were prior to the 2020 incident in that particular year, and so I can't actually recall what the – what the excuse was for the broken hand at that time.

Well, would it be fair to assume you would have asked him what happened?---Yes, I probably would have, and he probably would have told me, but Jessie's had a lot of injuries over the years and so the broken hand in the context of everything that he's had, it doesn't stand out as a significant event to me.

You said before when I asked you that you weren't aware of him ever lashing out at objects?---Yes.

So it would be fair to say then, wouldn't it, that you were not told when you were asked what happened to his hand that he had punched a wall?---That's – that's probably true.

So, presumably, you were told something different form that?---Yes.

56. The first extract is an exchange between counsel for the appellant and the respondent's father. In the course of that cross-examination, counsel extracted a concession concerning a single incident where the respondent had lied to his father about being the person responsible for damaging the father's car (the person responsible in fact being the appellant). It is unsurprising to me that this particular exchange formed no part of the

magistrate's analysis of the evidence. As was stated in *Soulemezis v Dudley (Holdings) Pty Ltd* (1987) 10 NSWLR 247 by Mahoney JA at [56]:

> … the law does not require that a judge make an express finding in respect of every fact leading to, or relevant to, his final conclusion of fact; nor is it necessary that he reason, and be seen to reason, from one fact to the next along the chain of reasoning to that conclusion.

57. The second extract is an exchange between counsel for the appellant and Mr Bryant, a friend of the respondent. In essence, what is conceded is that the witness had no real recollection of the respondent having a broken hand, or of the circumstances in which his hand was broken. The witness conceded that he probably would have asked about a broken hand, and that he was not told that the respondent had broken his hand when he punched a wall. Given the very limited recollection the witness displayed of the subject events, it is again unsurprising to me that this particular piece of evidence did not form part of the express reasons of the magistrate when dealing with the issue of good character.

*Respondent's submissions*

58. The respondent highlights the importance of the nature of the prior appeal in this matter in making the following submission:

> At no point in the proceedings below did the appellant ever foreshadow or refer to any rebuttal character to be adduced under s 110(2) or make clear that it was proposed that the good character evidence be rebutted either generally or in any specific respect. This is important when, as a background to these proceedings, it had been well understood that the first hearing had miscarried because of the respondent's then counsel's failure to adduce evidence about his good character (*Johnson v Hansen* [2024] ACTSC 353), and good character formed a substantial part of the respondent's case at trial.

59. With that background, the respondent notes the conspicuous absence of submissions from the prosecution at trial as to the use to be made of good character evidence and the ambit of any challenge that was made to it. As the respondent identifies, the only relevant submission concerning the father's evidence was that it showed, "that there is a different dynamic behind closed doors".

60. The respondent also emphasises the failure of the appellant to seek to be heard in response to a direction sought at trial in relation to *Melbourne v The Queen* [1999] HCA 32; 198 CLR 1 for the use of good character evidence. The relevant exchange was as follows (Transcript, 23 May 2025 at 258.29–40):

> *Ms Lewer*: And, your Honour, in addition to assessing his evidence as a whole and his demeanour in giving it, your Honour, of course, has the good character evidence and your Honour would give yourself a direction in accordance with Melbourne which has the effect of bolstering that evidence to make it far less likely that he would give untruthful evidence to your Honour.

> *His Honour*: Right. So it's character reference for two purposes then. The evidence of good character, 'I'm not the type of person to do this,' but evidence to support that he's also being truthful in his evidence before the court.
>
> *Ms Lewer*: Yes, your Honour.

61. The import of the decision in *Melbourne v The Queen* is in its confirmation that a direction as to good character is a discretionary matter without hard guidelines. In each case, an evaluation of the probative significance of good character evidence is called for both in terms of:

    (a) the accused's propensity to commit the subject crime; and

    (b) the accused's credibility.

62. The point the respondent makes is that the direction having been called for in respect of both categories, no contrary submission was made by the prosecution in closing.

*Relevant principles*

63. In the earlier appeal in this matter, Mossop J set out a helpful synthesis of the majority view in *Melbourne v The Queen* concerning good character directions at [19]:

> A majority of the court (McHugh J, Gummow J and Hayne J each writing separately) held that a judge is not obliged to direct the jury about an accused's good character but has a discretion whether or not to do so after evaluating the probative significance of the evidence in relation to the accused's propensity to commit the crime charged and the accused's credibility.

64. I am not satisfied that the magistrate fell into error in characterising the good character evidence for the respondent as "not challenged". As the respondent submits, the only substantive challenge was that in fact dealt with by the magistrate in terms of the use of pejorative language by the respondent in relation to the complainant.

64. Had I accepted that the magistrate fell into error in characterising the good character evidence in that way I would not have been satisfied that the characterisation in those terms was material to the outcome in the matter and on that basis, I would have rejected the ground of appeal in any event (see *Saunders v King* (ACT Supreme Court, Blackburn J, 16 September 1974) at 71-2).This ground is therefore not made out.

**No substantial miscarriage**

65. Had I found otherwise on either of the identified grounds of appeal, I would not have been satisfied that a substantial miscarriage of justice was demonstrated. There was a proper basis upon which the magistrate could experience some doubt as to the

respondent's guilt in respect of the particular charges brought against him. I accept the respondent's submission that:

> However, as accepted by the appellant below, the Court was required to approach the evidence of the complainant with particular caution to be satisfied that her account was an accurate and reliable one: *R v Murray* (1987) 11 NSWLR 12. Such caution also applied to acceptance of her complaint evidence (being corroboration as it were from the same source as the allegations now made).

**Residual discretion**

66. Had relevant error been identified and the proviso not engaged, I am satisfied that this is a matter in which it would have been appropriate to exercise the residual discretion.

67. The function of that discretion was described in *Harlovich v Sebbens* [2023] ACTSCFC 3 at [4]-[6]:

> 4. The exercise of the residual discretion is concerned with issues of fairness and justice, both to the individual offender and with respect to the administration of justice more generally: *Green* at 480 [43]; *R v JW* [2010] NSWCCA 49; 77 NSWLR 7 at 24 [92]; *DK v Director of Public Prosecutions (NSW)* [2021] NSWCA 134; 105 NSWLR 66 at 75 [38]. As Street CJ held in *R v Holder* [1983] 3 NSWLR 245; 13 A Crim R 375 at 255, the residual discretion "enables the court to keep an ultimate control by protecting a convicted person against unfairness or injustice if that would flow from an adverse appellate decision". For this reason, the considerations which are relevant to the exercise of the residual discretion are not confined to those outlined at [2] above: *Ralston* at [80]; JW at 23 [85].
>
> 5. The onus is on the prosecution to satisfy the Court that this discretion should not be exercised in favour of the respondent: *CMB* at 370 [66]. This, too, flows from a recognition that the concern of the residual discretion is with issues of justice and fairness. It is understandable that the prosecution, who seeks to invoke the jurisdiction of an appellate court to increase a sentence, should be required to satisfy the appellate court that the deployment of that jurisdiction will not occasion injustice or unfairness.
>
> 6. It is well established that the residual discretion applies to prosecution appeals to the Court of Appeal against sentences imposed by the ACT Supreme Court under s 37O of the *Supreme Court Act 1933* (ACT): *R v Flowers* [2014] ACTCA 13; *R v Nicholas* [2019] ACTCA 36 at [115] – [118]; and *Ralston* at [41].

68. I am mindful that this is a matter in which the parties have faced two trials and two appeals in this Court. In the event of a successful appeal the respondent would have been required to face trial for a third time, now more than three years after the subject events, with all of the associated costs and delays, and through no fault of either of the parties. Such an outcome would, in my view, be oppressive.

## Orders

69. For the reasons set out above the appeal is dismissed.

I certify that the preceding sixty-nine [69] numbered paragraphs are a true copy of the Reasons for Judgment of his Honour Acting Justice Muller.

Associate: M.G. Malouf

Date: 04/02/2026