



**Judgment Summary**  
Supreme Court  
New South Wales  
Court of Criminal Appeal

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**Swan v R [2016] NSWCCA 79**

RA Hulme, Garling and Wilson JJ

Today the Court of Criminal Appeal allowed, by majority, an appeal brought by Dean Matthew Swan against his conviction for recklessly inflicting grievous bodily harm in company. The Court quashed that conviction and substituted a conviction for assault occasioning actual bodily harm in company. The Court resentenced the appellant on the substituted conviction to imprisonment for 18 months, including a non-parole period of 12 months.

On 12 February 2013, Mr Dewey, the victim, was at his house in Cessnock with his wife and two young children. Late that evening, Mr Dewey heard voices outside his house. He went out onto the front veranda where he was confronted with a group of approximately 10 men, some of whom were armed with bats and pieces of wood. Mr Swan was a member of the group. One of the men yelled that they were going to kill Mr Dewey. After Mr Dewey escorted his daughter to his mother's house next door, the group dragged Mr Dewey to the middle of his front yard and kicked and punched him. He was struck with a cricket bat and a guitar was smashed over his head. When police car sirens were heard, the group fled the scene.

As a result of this incident, Mr Dewey suffered a fracture to the transverse process of the L3 vertebra in his back. He was taken to hospital, where he remained for 48 hours before being discharged.

At trial, the Crown argued that the injury to Mr Dewey's back amounted to grievous bodily harm. It relied upon the evidence of Mr Dewey and Dr Ting. Mr Dewey testified that he felt "excruciating" pain in his lower back after the incident and that he struggled to walk for several weeks. However, he told the Court that his injuries did not require surgery and that he no longer experiences pain except when he undertakes physically strenuous activities. Dr Ting, who treated Mr Dewey on the night of the incident, described the injury as "minor" and told the Court that, following Mr Dewey's discharge from hospital, he did not require any further treatment.

The sole issue on appeal was whether the jury's conclusion, essential to its verdict, that Mr Dewey suffered "grievous bodily harm" was unreasonable or could not be supported by the evidence. In regard to this issue, the Court held, by majority, that the jury's verdict was unreasonable because it must have entertained a reasonable doubt on the evidence that Mr Dewey's injury amounted to grievous bodily harm. The Court stated that "grievous bodily harm" means "really serious bodily injury" and that the injury to Mr Dewey's back did not satisfy

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this definition for the following reasons: there was no displacement of the fracture; the fracture did not require surgery; the injury was not permanent; the injury did not require any further treatment; and Mr Dewey's treating doctor described the injury as "minor".