

## ***R v Lorenz* [1998] ACTSC 275 (14 August 1998) – Australian Capital Territory Supreme Court**

‘Assault occasioning bodily harm’ – ‘Battered woman syndrome’ – ‘Emotional and psychological abuse’ – ‘Exposing children’ – ‘General deterrence’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Unlawful confinement’ – ‘Where the offender is also a victim’

Charge/s: Robbery with an offensive weapon.

Trial: Judge only trial.

Facts: On 20 November 1996, Ms Lorenz (‘the accused’) entered a supermarket and attempted to purchase some cigarettes with her EFTPOS card from the complainant. The transaction could not be completed because there were insufficient funds in the account. The accused maintained she was sure there were funds in the account and re-tried the card but it was again declined. She then left the store. Ten minutes later, the accused returned to the store with a pen knife. She approached the complainant, held the knife out in front of her and said, ‘give me all your fucking money or I’ll slit your throat’. The complainant gave the accused \$360 in cash and the accused left the store. While initially denying any involvement, the accused made admissions to the police.

Counsel for the accused argued that the accused was acting out of duress on the basis of a threat made by Ms Lorenz’s partner on the night before the robbery and repeated the following morning to the effect that if she did not obtain enough money to enable him to re-register his car he would kill her. This threat followed a pattern of violent and threatening behaviour towards the accused over a number of years (See [11]). On the morning of the robbery, the accused, who was pregnant with the couple’s third child, found out that she was unable to get the immediate payment of an advance payment from the Department of Social Security to pay the re-registration.

Decision and Reasoning: There was some discussion in this case of ‘battered woman syndrome’ (See [26]-[31]). Crispin J accepted that upon failing to receive advance payment from the Department of Social Security, the accused became frightened and confused and the robbery was an impulsive act due to her fear that her partner would kill her. His Honour stated: ‘In my view her failure to attempt to extricate herself from the situation whether by leaving him or otherwise is largely explicable by her fear and confusion. Furthermore, she may have thought that any escape would have been only temporary and that sooner or later [her partner] would have been bound to have caught up with her and carried out his threat’ at [30].

However, 'a diagnosis of battered woman syndrome does not of itself give rise to any defence. The law does not recognise any general principle that people should be absolved from criminal conduct because they had been beaten or abused or because a psychological condition caused by such treatment may have led them to commit the offences with which they are charged. Nonetheless, evidence that such a person may have had a psychological condition of this kind may be relevant to several defences known to the law' at [31].

Here, counsel for the appellant unsuccessfully attempted to rely on the defence of duress. In the accused's favour, His Honour found that the threat was effective at the time of the offence, the accused did not fail to take advantage of a reasonable opportunity to render the threat ineffective, and, in light of the extremity of the actual and threatened violence displayed by the accused's partner, a person of ordinary firmness of mind may have acted in the way the accused did (See [35]-[37]). However, the accused's partner did not direct the accused to commit the offence and accordingly the defence of duress failed (See [38]-[41]). In the alternative, counsel for the accused attempted to rely on the defence of necessity. However, His Honour held that the imminence of danger fell well short of the required standard for the successful proof of the defence (See [42]-[45]). She was accordingly found guilty.

The accused left her partner shortly after the robbery and had formed a relationship with another man. She had just turned 23, had three children and was pregnant to her new partner. The new relationship was apparently a happy one. In these circumstances, and to give her the opportunity to start a new life for herself and her children, Crispin J found it appropriate to defer passing sentence on the condition that she enter into recognisance to be of good behaviour for a period of three years.