

***Wilson v The Queen* [1970] HCA 17; (1970) 123 CLR 334 (17 June 1970) – High Court of Australia**

‘Directions and warnings for/to jury’ – ‘Evidence’ – ‘Murder’ – ‘Relationship evidence’ – ‘Relevance’ – ‘Statements made by deceased's wife charging accused with desire to kill her’

Charges: Murder.

Appeal Type: Application for special leave to appeal against conviction.

Facts: The facts of this case were summarised concisely by Martin CJ (with whom Pullin JA and Hall J agreed) in *O’Driscoll v The State of Western Australia* [2011] WASCA 175 (10 August 2011) [DT1] at [26] as follows -

‘[T]he appellant was convicted of the murder of his wife by shooting her in the back of the head. A critical issue at trial was whether she was deliberately shot or whether the gun had discharged by accident. The Crown led evidence that the deceased said to the accused, in the presence of other witnesses, ‘I know you want to kill me for my money’ and ‘I know you want to kill me, why don’t you get it over with’. These statements were admitted by the trial judge, subject to a direction that the jury should not treat them as evidence of the state of mind of the accused.

Issue/s:

1. Whether the statements made by the appellant’s wife were admissible.
2. If they were admissible, whether they should have been excluded by the trial judge because their probative value was outweighed by the potential prejudice to the accused.

Decision and Reasoning: The Court unanimously dismissed both grounds of appeal and held that the evidence was admissible.

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Barwick CJ noted at [3] that, 'The fundamental rule governing the admissibility of evidence is that it be relevant. In every instance the proffered evidence must ultimately be brought to that touchstone.' Evidence of the 'nature of the current relationship between the applicant and his wife' was relevant to the appellant's guilt. Evidence of a 'close affectionate relationship' could be used by the jury to conclude that the appellant was not guilty. Evidence of hostility in the relationship could be used by the jury to conclude that the appellant's argument that the shooting was accidental lacked credibility. His Honour did concede that if the deceased's statements 'had not been part of the evidence of a quarrel of a significant kind' ([8]), they would have been inadmissible. However, in this case the statements were part of a 'quarrel' between the parties and were indicative, 'of the nature of the quarrel and of the levels which the mutual relationship of the parties had reached' (see at [8]). More generally, his Honour concluded that 'evidence of the relations of the accused with others' is admissible not only in cases where it establishes motive, though this may be the most common way in which it is used. This type of evidence could also be admissible if it explains an 'occurrence' or assists in the choice between two explanations of an 'occurrence' because such evidence satisfies the test of relevance (see at [7]).

Menzies J (with whom McTiernan J and Walsh J agreed) reached the same conclusion – 'To shut the jury off from any event throwing light upon the relationship between this husband and wife would be to require them to decide the issue as if it happened in a vacuum rather than in the setting of a tense and bitter relationship between a man and a woman who were husband and wife'(see at [4]).

2. Barwick CJ held that while the deceased's statements were damaging to the appellant, they were not prejudicial, and showed, 'the depths to which the relationship of the parties, as husband and wife, had sunk' (see at [9]).