

***R v Stephen (No 2)* [2018] NSWSC 167 (6 February 2018) – New South Wales Supreme Court**

‘Abused person’ – ‘Court processes’ – ‘Fair hearing and safety’ – ‘Mental health’ – ‘Physical violence and harm’ – ‘Post-traumatic stress disorder’

Charges: Murder.

Case type: Application by the accused to sit outside the dock.

Facts: The accused was on trial for murder for stabbing the victim, who was her husband. It was undisputed that at the time of stabbing, she had been subjected to severe violence at the time of the offence, and for over a year prior to the stabbing (see *R v Stephen (No. 3)* [2018] NSWSC 168 (20 February 2018)). The accused made an application to sit outside the dock, next to her legal team. The Crown supported the application ([1]-[2]).

Issues: Whether the judge should exercise his discretion to grant the request pursuant to s 34 *Criminal Procedure Act 1986* (NSW).

Decision and Reasoning: The application was refused.

Justice Button weighed up the countervailing factors. Factors in favour of granting the application were that the accused had been on bail for many months, she was not a security risk, she suffers from post-traumatic stress disorder, and she argued that sitting in the dock will be prejudicial for the jury ([3]-[6], [9]). Factors weighing against granting the application were that the accused is not a child or a person suffering from a disability, that the dock is a traditional symbol of the gravity of the proceedings, that there is no inconvenience for the accused being in the dock, and she is charged with a very serious offence ([8], [10]-[14]).

Justice Button concluded that there was nothing exceptional about the matter to justify the request being granted. The next day, his Honour received further submissions with more detailed evidence about the accused’s mental health issues but declined to alter the ruling ([18]).