

## ***R v LI* [2016] SASC 4 (4 February 2016) – Supreme Court of South Australia**

‘Battered woman syndrome’ – ‘Evidence’ – ‘Expert testimony’ – ‘Murder’ – ‘Physical violence and harm’

Charge/s: Murder.

Proceeding: Application to exclude expert evidence.

Facts: The defendant was tried for murdering his mother. His counsel sought to adduce expert psychiatric evidence relating to his relationships with his family, his mother as well as his childhood. The Director of Public Prosecutions sought to have this evidence excluded.

Issue/s: Whether the evidence fell outside the area of human knowledge or experience, such that a jury would be able to form a judgment about it without expert assistance.

Decision and Reasoning: The application was allowed and the evidence was excluded. It was not in dispute that the defendant caused his mother’s death – the issue at trial related to self-defence. The evidence detailed his traumatic upbringing where he witnessed episodes of domestic violence. It explored the dynamics of the relationship between the accused and his mother. It did not detail any recognised psychiatric illness or disability that the accused suffered which would affect his capacity to give evidence or recollect events. Indeed, the psychiatrist was in fact impressed with the accused’s ability to describe subtleties of his history in a way that convinced the psychiatrist that his account was accurate and that the relationship was abusive. The psychiatrist’s view was that the case was ‘unusual’. Blue J noted at [12] that the only ‘expert’ element of the report was the psychiatrist’s view that the accused was fit to stand trial and that the mental impairment defence was not available. His Honour then distinguished the case of *R v Runjanjic*; *R v Kontinnen* (1992) 56 SASR 114; [1991] SASC 2951 (28 June 1991), where the Court held that expert evidence regarding the ‘learned helplessness’ associated with ‘battered woman syndrome’ were contrary to ordinary expectations of human behaviour such that juries could be misled without the assistance of expert evidence. The recent Queensland Court of Appeal decision of *R v Jones* [2015] QCA 161 (1 September 2015) was analogous. In that case, the proposed expert psychiatric evidence was found to be a matter of common knowledge. The same approach was adopted in this case. Many of the matters in the evidence simply detailed the history of the relationship and issues relating to Chinese family culture. These were not issues that needed explanation from a psychiatrist. See at [22] – *‘The accused can give the evidence as he sees fit about the verbal or physical violence that he suffered at the hands of his mother. If that evidence is accepted by the jury it will be self-evident that the relationship between Mr Li and his mother was both complex and intense.’*