

***Rice v McDonald* [2000] TASSC 70 (21 June 2000) – Supreme Court of Tasmania**

‘Compulsion’ – ‘Emotional abuse’ – ‘Expert evidence’ – ‘Exposing children’ – ‘Following, harassing, monitoring’ – ‘Physical violence and harm’ – ‘Stealing’ – ‘Systems abuse’ – ‘Where the offender is also a victim’

Charges: Stealing, Making a false report to police

Appeal Type: Notice to review conviction

Facts: The applicant and her partner were in a domestic relationship riddled with violence. For a summary of the history of the violence against her, see paragraphs [4]-[10]. The applicant was charged with stealing a television. She entered into an agreement to rent the television under instructions from her partner, who then arranged for the television to be sold to a friend. He instructed the applicant to tell the purchaser that the television came from her sister. After the applicant did not report that the television was stolen to the police, her partner became very angry. As a result of fearing what her partner would do if she defied him, the applicant then reported the television was stolen to the police and the rental company. After the police located the television in the possession of the purchaser, the applicant fully admitted to the crime and protected her partner by providing a false name.

At trial, the applicant gave evidence that she had acted out of fear that she would suffer grievous bodily harm if she did not follow her partner’s demands to commit the offences. She alleged that her partner threatened to kill her if she did not accept full responsibility for the crime and provide a false name to police. That is, she established an evidentiary basis for the court to consider compulsion under s 20 of the *Criminal Code 1924 (Tas)* (the Code) and duress at common law. The magistrate found that neither of those defences applied.

Issues:

1. Whether the magistrate erred by applying the provisions of the Code governing criminal responsibility to the charge of making a false report.
2. Whether the magistrate made legal errors in applying the defences of duress and compulsion.
3. Whether the magistrate erred in failing to sufficiently consider the evidence of a psychologist with extensive experience in domestic violence.

Decision and Reasoning: The appeal was upheld in respect of issues 2 and 3.

1. The respondent conceded that this ground was made out. One difference between the common law defence of compulsion and the statutory defence is that it is not necessary for the person making the

threat to be present at the time the offence is committed. The applicant was entitled to the benefit of the common law defence. However, this was not sufficient to overturn the conviction because the magistrate was satisfied that the prosecution proved that the applicant was not acting under duress.

2. The magistrate concluded that the applicant's contention that her partner would 'bash the hell out of me' contained a qualification and because of a slight hesitation in her response, she had not given credible evidence that she was threatened with serious violence. The Court disagreed, holding that given the history of violence, the words 'bash the hell out of me' amounted to a clear threat of serious harm.

In referring to the requirement of immediacy under s 20 of the Code, the magistrate concluded that her partner's threat would not be carried out immediately because of the presence of the purchaser of the television. The Court disagreed, holding that immediacy does not mean that the threat will be carried out at the time of compliance or refusal, but that it is 'proximate' to the making of the threat. It requires that the person coerced 'believes that such threats will be executed' at the time when the person making the threats is able to carry them out. The magistrate also erred in concluding that the applicant could not have believed the threats could be carried out immediately. Given the history of violence, she was entitled to believe that the threats would be carried out immediately. In relation to seeking the protection of the purchaser, the Court held that this proposition 'defies logic and experience' ([25]). The magistrate did not sufficiently take into account the history of the relationship in determining the conduct said to give rise to compulsion. Her partner had complete domination over her and had assaulted her in a refuge. The false report was made at the direction of her partner in the face of explicit and implicit threats. While she theoretically could have made a complaint to the officer about her partner when she filed the report, the option of applying for a restraining order was not consistent with complying with the threats.

3. The magistrate concluded that the psychologist's evidence did not assist the defence in establishing duress and compulsion. This amounted to an error and the magistrate was required at least to consider the psychologist's evidence and the history of violence in determining whether the applicant acted under duress or compulsion.