

## ***Tasmania v R D P* [2009] TASSC 72 (25 February 2009) – Supreme Court of Tasmania**

‘Emotional and psychological abuse’ – ‘Evidence’ – ‘Exposing children’ – ‘Physical violence and harm’ – ‘Police family violence order’ – ‘Rape’ – ‘Relationship evidence’ – ‘Risk factor - separation’ – ‘Sexual and reproductive abuse’

Charge: Rape

Proceeding: Application to adduce relationship evidence

Facts: The defendant was in a relationship with the complainant for about 14 months. The alleged offence occurred after the relationship ended. A police family violence order was in place against the defendant. The complainant arranged to attend the defendant’s house to collect her belongings with her 10-year-old son and her brother. She collected her belongings and then went to the bathroom with her son where she found the defendant. There was a knife on the hand basin. The complainant informed the defendant that she did not want to have sex, but he performed oral sex on her. She exposed her breasts on his demands because she thought he might hurt her if she did not. The complainant screamed for help and tried to defend herself by kicking the defendant. The defendant then threatened to rape her anally unless she uncrossed her legs. She then uncrossed her legs and the defendant vaginally raped her. This was done in front of their child.

Issue: Whether the relationship evidence should be admitted.

Decision and Reasoning: The evidence as to the nature of the relationship was admitted, with the exception of evidence of general physical and verbal abuse unconnected with sexual activity. The evidence included general physical abuse and physical violence used to coerce the complainant into sexual intercourse, one prior occasion of non-consensual vaginal intercourse and an act of anal intercourse. Porter J held that the evidence would allow the jury to more readily assess the actions of the complainant and defendant and ascribe meaning to things said by the defendant. In particular, evidence of prior sexual intercourse without consent might serve to explain why the complainant may have displayed some acquiescence to the oral sex and the vaginal penetration. Also, evidence of prior anal penetration was relevant to the jury’s assessment of why the complainant uncrossed her legs prior to vaginal penetration, given the high level of pain and discomfort the complainant suffered as a result of the earlier anal penetration. The probative value of the evidence outweighed its potential prejudice.