***Evans v The State of Western Australia* [2010] WASCA 34 (26 February 2010) – Supreme Court of Western Australia (Court of Appeal)**

‘Accident’ – ‘Alcohol’ – ‘Hearsay evidence’ – ‘Insanity’ – ‘Murder’ – ‘Physical violence and harm’

Charge/s: Murder.

Appeal type: Appeal against conviction.

Facts: The male appellant and the deceased woman had been in a seven-month relationship. The police had been involved on at least five occasions including an incident in which the appellant broke the deceased’s hand. The deceased, an alcoholic, was not inclined to cooperate with police and declined to provide a statement on these occasions. The appellant convinced police that he was the victim of the deceased’s aggression. On 13 November 2007, the appellant caused the deceased knife wounds to her right arm, her neck, and her chest near her armpit. After cutting her neck, the appellant pressed on the deceased’s chest, accelerating her blood loss and her death. During an interview with police, the appellant admitted that he killed the deceased. The appellant had a history of mental health problems from August 1999. At trial, evidence was adduced from Ms Maton about conversations she had with the deceased regarding acts of violence perpetrated upon her by the appellant. The two broad issues at trial were whether the State negated the defence of accident and whether the appellant had established the defence of insanity.

Issue/s: Some of the issues included that –

1. The trial judge erred in her directions on accident.
2. The trial judge erred in her directions on insanity.
3. The trial judge erred in directing the jury as to the use that could be made of out-of-court statements made by the deceased.

Decision and Reasoning: The appeal was allowed. Wheeler JA (with whom Owen JA agreed) found it unnecessary to deal with ground 1. The respondent accepted that the trial judge erred in her classification of the infliction of the fatal wound as an ‘event’ for the purposes of applying the defence of accident. The appeal would have to be allowed unless there was no substantial miscarriage of justice. Wheeler JA found it unnecessary to undertake such analysis because the appeal was allowed on other grounds (See [46]). On ground 1, McLure P found there had been a substantial miscarriage of justice (See [15]-[17]).

Wheeler JA (with whom Owen JA agreed) allowed the appeal on ground 2. The trial judge failed to adequately direct the jury that the appellant could be found not guilty by reason of insanity, even if the appellant knew what he was doing was contrary to law (See [57]-[58]). Further, the trial judge failed to direct the jury that, when considering whether the appellant was deprived of the capacity to know he ought not to do the act, the issue was whether the appellant was incapable of reasoning with some moderate degree of calmness as to the wrongness of the act or of comprehending the nature or significance of the act of killing (See [61]-[62]). McLure P held that the trial judge failed to direct the jury that a person can lack the relevant capacity even if they know the act is unlawful (See [24]-[27]).

The appeal was also allowed on ground 4. Wheeler JA (with whom McLure P and Owen JA agreed) noted that the evidence of Ms Maton was provided in graphic and striking detail, and had the potential to be significantly prejudicial to the appellant. Not only was the evidence admitted but the trial judge invited the jury to treat the account given by Ms Maton as evidence of the truth of the matters recounted to her. This direction was plainly erroneous (See [72]-[74]). A retrial was ordered. See *Evans v The State of Western Australia* [2011] WASCA 182 and *The State of Western Australia v Evans [No 2]* [2012] WASC 366 (9 October 2012).