

***The State of Western Australia v Carlino* [No 2] [2014] WASC 404 (31 October 2014) – Supreme Court of Western Australia**

‘Battered woman syndrome’ – ‘Economic abuse’ – ‘Emotional abuse’ – ‘Evidence’ – ‘Expert testimony’ – ‘Following, harassing, monitoring’ – ‘Murder’ – ‘Opinion evidence’ – ‘Physical violence and harm’ – ‘Self-defence’

Charge/s: Murder.

Proceeding: Application to adduce certain expert evidence.

Facts: The accused and the deceased were both male. They lived together, but it was not a sexual relationship. The accused was the deceased's assistant and helped with the deceased's drug dealing activities. The accused admitted killing the deceased by shooting the deceased to the head while the deceased was sleeping. The main issue at trial was to be whether he acted in self-defence. The accused sought to call evidence of a psychologist regarding his state of mind. The psychologist was to give evidence, ‘that the accused was in a compromised mental state at the time as a result of being in an abusive relationship with the deceased. The accused is said to have felt powerless in relation to (the deceased), and to have thought that the only way out of the relationship was to kill (the deceased)’ (see at [2]). The State objected to the admission of this evidence on the basis that it was not a recognised psychological condition and that it was not analogous to cases falling within the ‘battered woman syndrome’ (BWS). The state further submitted that the matters to be the subject of the evidence from the psychologist were not outside the ordinary experience of jurors.

The accused described himself as a ‘lackey’, the deceased as ‘possessive’ and that the deceased would threaten violence and control his ‘movements, communications and finances’. The psychologist’s evidence was that the relationship was consistent with the learned helplessness associated with BWS. The psychologist also stated that the syndrome was not confined to females or sexual relationships, and that this relationship was of a sufficient duration to be consistent with the syndrome.

Issue/s: Whether the evidence of the psychologist should be admitted.

Decision and Reasoning: The application was refused. This did not preclude a claim to self-defence, but was relevant to the issue of whether the accused believed his actions were necessary. Hall J held that the psychologist's evidence was opinion evidence and admissible only if it met the requirements of expert evidence (see at [15]). His Honour noted that BWS is widely accepted as an area of specialised knowledge, but that it is important to pay close attention to what is actually recognised as BWS. He referred to *Osland v The Queen* (1998) 197 CLR 316 where Kirby J stated that the syndrome should extend beyond females as victims. Hall J held that this relationship differed from a typical 'battering' relationship – it was not a long term marriage relationship and was not characterised by 'recognisable cycles of tension, violence and reconciliation' (see at [25]). While there were similarities in the 'assertion of increasing control, emotional volatility and increasing feelings of helplessness' (see at [25]), his Honour held that the differences between these circumstances and other BWS cases required that, '*the application of the syndrome to a situation like this is accepted by the majority of experts in the field of psychology*' (see at [26]). There was no evidence of majority acceptance of experts. As such, the evidence was inadmissible. Evidence of the violent and controlling behaviour of the deceased could still be considered by the jury in order to assess whether the accused's actions were necessary to prevent the deceased from harming him (see at [31]).