

***R v Cahill (No 2)* [2018] NSWSC 1531 (11 October 2018) – New South Wales Supreme Court**

‘Evidence issues’ – ‘History of abuse of accused’ – ‘Relationship, context, tendency and coincidence evidence’

Charges: Murder x 1.

Case type: Trial.

Facts: The accused and the victim were in a relationship, characterised by incidents of violence by both sides. They immigrated to Australia from Ireland and shared accommodation with different people over a period of time. The accused stabbed the victim in the neck, resulting in his death. The defence adduced evidence from various people, such as an ex-partner of the victim and the father of another ex-partner. Both provided supporting evidence of incidents of violence during the relationships ([92]-[93]). The Crown submitted that the material lacked significant probative value as it was expressed vaguely and was remote in time from the events in the trial ([94]). The Crown also sought to have admitted as relationship evidence the totality of the evidence sought to be tendered for tendency purposes together with additional evidence of the accused’s various roommates ([96]-[98]).

Issues: Whether certain evidence of the Crown and defence was able to be adduced.

Decision and reasoning: The judgment by Johnson J deals with a number of evidentiary issues, involving tendency and relationship evidence ([99]-[123]). With respect to the statements by an ex-partner and the father of another ex-partner, the events to which they referred were significantly remote in time from those relevant to the trial and did not involve the accused. Consequently, his Honour did not allow the accused to rely upon this evidence for tendency purposes ([114]-[119]). Further, Johnson J was satisfied that the evidence tendered by the Crown should be admitted as relationship evidence ([99]-[103]). At [120]-[122], Johnson J sought further submissions about particular areas of the tendered material. These areas related to the Crown’s intention to adduce evidence of things said by the victim to other persons with respect to events concerning the accused.