

***R v Cahill (No 3)* [2018] NSWSC 2025 (12 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. This matter relates to the additional evidence that Johnson J demanded from the Crown in *R v Cahill (No 2)* [2018] NSWSC 1531. This evidence related to things said by the victim to other persons with respect to events concerning the accused ([2]). Firstly, the Crown sought to tender a statement by a man who claimed that the victim told him that the accused hit him when he was sleep ([3]). He also stated that the victim told him that the accused had sent him a text that she would kill him ([25]). Secondly, the Crown sought to tender evidence arising from another man’s statement that the victim told him that he was attacked by the accused with a screwdriver ([16]).

Issues: Whether certain evidence is admissible.

Decision and reasoning: The decision involved rulings made on admissibility of evidence (see [12], [14], [24] and [28]). With respect to the first statement, the Court held that the passage of time and the lack of precision as to the incident to which the statement related affected the question as to whether or not it ought to be admitted as evidence of truth of the fact ([10]). However, the Court held that this evidence will be admitted at the trial, but the jury will be directed that it cannot be used as evidence of the truth of the facts of the matters asserted in the representation ([11]-[12]). The Court did not allow the Crown to adduce the additional statement about the text message as there was no indication as to when it was sent. The absence of any time when it was said to have occurred significantly reduced the evidentiary use of the material ([25]-[28]). With respect to the second statement, the Court considered s 65 of the *Evidence Act 1995* and admitted it as evidence of the truth of the fact ([21]-[24]).