

***R v De Beyer* [2017] NSWSC 752 (13 June 2017) – New South Wales Supreme Court**

‘Children’s evidence’ – ‘Murder’ – ‘Relationship evidence’

Charges: Murder x 1.

Case type: Judgement on the admissibility of relationship evidence.

Facts: The accused and deceased were married. The accused was on trial for her murder. It was the Crown case that the accused had stabbed his wife. He gave evidence that she stabbed herself. The prosecution case was circumstantial ([1]).

Issues: Whether evidence of the accused and deceased’s relationship was admissible ([2]).

Decision and Reasoning:

Evidence that was admitted without objection:

- > Eyewitness evidence from the accused and deceased’s son and daughter, including witnessing the accused punching and kicking the deceased, throwing things at the deceased and threatening to kill her ([3], [17]).
- > Statements made to the police by one child, the deceased and police officers after police attendance at a violent incident ([9]-[10], [15]).
- > Parts of recordings made by the deceased of arguments between her and the deceased ([13], [25]).

Evidence that was objected to, and admitted:

- > A conversation between the deceased and her sister, including statements that the accused would not let the deceased out of the house or have a phone “because he was scared she would call the police”, and that she would not leave him “because if he found her he would kill her” [23]. The statements were objected to on the basis that they were representations of the accused state of mind ([23]). The Court held that they were expressions of fear, and were admissible as an exception to the hearsay rule ([24]).
- > Notes and diary entries made by the deceased, which included assertions of fact about episodes of abuse, and statements about the deceased’s state of mind about the relationship ([31]). Only general statements of fact were admitted, because they were not hearsay evidence ([30]).

Evidence that was not admitted:

- > Statements made by the deceased to her daughter that the accused attempted to drown her. The daughter only recollected these statements once she was shown the deceased’s diary. The daughter’s recollection did not appear to be firm. Therefore, Hidden AJ held that evidence was not highly probable

to be reliable ([20]-[22]-[22]).