

***Scrutton v The Queen* [2019] NTCCA 9 (18 April 2019) – Northern Territory Court of Criminal Appeal**

‘Evidence’ – ‘Extension of time’ – ‘Legal representation and self-represented litigants’ – ‘Relationship, context, tendency and coincidence evidence’

Charges: Murder x 1.

Case type: Application for an extension of time and leave to appeal.

Facts: It was alleged that the applicant and the deceased were drinking with others and became heavily intoxicated. They began arguing over jealousy issues. They made their way to a shed in which the applicant was staying at the time. The following morning, the applicant told an officer at the police station that he had a fight with his wife the previous evening, but did not disclose the nature of the fight or the deceased’s condition. At that time the deceased was lying dead on a mattress in the shed. Forensic testing detected the deceased’s blood on the jeans and boots that the applicant was wearing at the time of his arrest. It is important to note that the Crown adduced evidence of 10 assaults between 2005 and 2013 by the applicant on the deceased to which the applicant had pleaded guilty before the Local Court. The trial judge ruled that the evidence of the assault was admissible as relationship evidence. The applicant filed an application for leave to appeal, as well as an application for an extension of time.

The applicant sought leave to appeal on the grounds that:

- The forensic and expert evidence concerning the bloodstains on his boots and jeans was false, misleading, flawed and/or inconsistent with the prosecution case and guilt;
- The trial judge’s direction to the jury concerning the bloodstains was inconsistent with the evidence;
- The trial judge wrongly admitted evidence of the assaults previously committed by the applicant upon the deceased ([17]).

Issue: Whether extension of time should be granted; Whether forensic evidence concerning bloodstains were false, misleading, inconsistent, flawed and/or inconsistent with the prosecution case and guilt; Whether the trial judge’s direction to the jury concerning the bloodstains were inconsistent with the evidence; Whether the trial judge wrongly admitted relationship evidence.

Held: By reference to the principles in *Green v The Queen* [1989] NTCCA 5, the Court dismissed the application to extend time. The applicant did not provide any reason for the delay beyond the fact that he ‘could not find a lawyer’, and there were no exceptional circumstances or special reasons to warrant granting an extension ([31]). The Court also held that no viable grounds of appeal were established. Notably, their Honours upheld the trial judge’s decision to admit the evidence of 10 prior domestic assaults as relationship evidence under *Evidence (National Uniform Legislation) Act*. They held that the relationship evidence provided insight into the nature of the applicant’s and deceased’s relationship. Such evidence would potentially assist the jury to determine if they were in a ‘harmonious and caring relationship or a relationship marred by anger and violence’, and whether the applicant killed the deceased and, if so, his intention at the time. The probative value of the relationship evidence was not outweighed by the risk of unfair prejudice to the accused. The trial judge’s directions in relation to the jury’s use of the relationship evidence were therefore correct in law ([46]).