

## ***R v Ashley* [2014] NTSC 15 (10 July 2014) – Northern Territory Supreme Court**

‘Admissibility of evidence’ – ‘Hearsay’ – ‘Motive’ – ‘Murder’

Charge: Murder

Proceeding: Pre-trial rulings on evidence

Facts: The accused was charged with murdering his ex-partner with whom he had two children. The prosecution sought to adduce evidence relating to the state of the accused and victim’s relationship from the time of separation until the victim’s death. The prosecution was attempting to argue that motive could be inferred from the nature of the relationship between the parties contained within such evidence. Some of this evidence comprised hearsay representations made by the victim to other witnesses.

Issue: Whether the evidence relating to the accused and victim’s relationship was admissible.

Decision and reasoning: Evidence as to the state of the relationship is admissible if it is relevant to the accused’s anger towards the victim by the use of controlling behaviours and frustration directed towards the victim. This kind of evidence is relevant at common law and within the meaning of s 55 of the *Evidence (National Uniform Legislation) Act 2011* (NT) as evidence that could rationally affect the assessment of a fact in issue. However, hearsay evidence can only be admitted under s 67 if the representations made by the deceased occurred when or shortly after the asserted fact occurred in circumstances where it was unlikely to be fabricated (s 65(2)(b)), or if it is highly probable the representations were reliable (s 65(2)(c)).

Blokland J considered whether 31 pieces of hearsay evidence were admissible. The evidence included representations made by the victim to police officers prior to her murder, to the practitioner for the Department of Children and Families who was managing the case, and to her daughter. The representations related to the accused’s physical or emotional control over the victim and his history of assaulting her.

One item considered was a statement the victim made to the police describing an assault by the accused. Representations contained within this statement regarding the assault and the accused taking the victim's car keys were admitted. Text messages and statements regarding the accused's threat to kill himself were also admitted. However, a statement made by their son was not admitted, as it was not a representation made by the victim as required by s 65. The statement also contained representations about the accused visiting the victim's brother's house and allegations that the accused was violent towards his daughter. These representations were also not admitted as evidence as their probative value outweighed the danger of prejudice against the accused.

Some other representations that were not admitted included those made to the case management practitioner that the victim attempted to leave the accused but he would not let her; that the accused was not physically but emotionally abusive towards the victim; and that the accused was harassing the victim at her brother's house.

Note: Subsequent to this ruling, the accused stood trial and was found guilty of murder. Blokland J provided additional reasoning on two procedural matters that arose during the trial in *R v Ashley* [2014] NTSC 26. The accused subsequently successfully appealed the conviction in *Ashley v R* [2016] NTCCA 2 on procedural grounds amounting to a miscarriage of justice. The conviction was quashed and a retrial ordered.