

## ***Hill v The Queen* [2020] VSCA 220 (3 September 2020) – Victorian Court of Appeal**

‘Aggravated burglary’ – ‘Appeal against sentence’ – ‘Causing injury intentionally’ – ‘Female perpetrator’ – ‘Home invasion’ – ‘Separation’ – ‘Threats to kill’ – ‘Weapon’

Charges: Threat to kill x 1; Aggravated burglary x 1; Causing injury intentionally x 2.

Proceedings: Application for leave to appeal against sentence.

Facts: The applicant and her husband separated seven months earlier, when the husband formed a relationship with his new partner. The applicant regularly accused her former partner of infidelity and made disparaging comments about his new partner. The applicant occasionally made threats about killing her former partner and his new partner to the applicant’s daughter, but the daughter did not take these seriously. On 19 October 2017, the applicant assaulted her daughter. The applicant was charged with assault and a protection order was taken out against her to protect her daughter. On the same day, the applicant threatened to kill her former husband, his new partner and his next-door neighbour. Later that day, the applicant carried out the violent home invasion.

The female applicant armed herself with weapons (a length of pipe and a knife) and smashed a window to enter the home of her ex-husband and his new partner. The applicant attacked her ex-husband and his new partner, stabbing them both.

Grounds: The sentencing judge erred in (a) failing to find, on the balance of probabilities, that the applicant had experienced protracted family violence; and (b) finding that the offending was ‘purposeful and grievance-driven’.

Decision and reasoning: *Leave to appeal refused.*

[4] In seeking leave to appeal, the applicant disputed the judge’s characterisation of the offending as ‘purposeful and grievance-driven’. According to the submission, the true explanation for the applicant’s conduct lay in the history of violence inflicted on her by [former partner] during the marriage. Instead of aligning the case with those involving male-to-female violence following a relationship breakdown, it was said, the judge should have viewed the applicant’s conduct as reflecting the ‘very different psychological pathway’ which results from protracted domestic violence.

That submission was rejected as there was no objective evidence to establish a link between the offending and violence experienced by the applicant during the marriage. All of the evidence before the sentencing judge supported the conclusion that “what drove this very serious offending was the applicant’s distress at having been ‘abandoned’ by her former partner and anger towards [his new partner] for ‘taking’ her husband”.

[37] ... in *Filiz [v The Queen (2014)]*, the Court said:

Senior counsel for the applicant rightly conceded that general deterrence is a significant sentencing factor in this case, not only in relation to aggravated burglary generally, but most particularly in relation to violent offending against a former domestic partner. ... Offending of this nature is too often perpetrated by men whose response to the breakdown of a relationship is one of possessive, violent rage. It goes without saying that such a response, to what is a common human situation, is utterly unacceptable. This Court has made it clear that such offending will attract serious consequences ...

[38] In the present case, the offending was perpetrated by a female against her former male partner (and his new partner). But, in our respectful view, the judge was quite correct to view it as falling into the same category of post-separation, anger-driven violence.

[39] In our view, no other conclusion was reasonably open on the material before the Court but that it was that anger — directed both at [her former partner and his new partner] — which was the driving force behind this offending. This was well illustrated by the applicant’s having said to [the victim] that she would ‘never stop’ stabbing her. It may be accepted that the applicant was not making ‘an assertion of possession and control’. But that seems to us to be immaterial. What matters is that, seemingly unable to accept the fact of the separation, the applicant gave vent to her anger and distress by this appallingly violent invasion of [her former husband’s] home.

[40] The position would have been entirely different had there been any evidence before the sentencing judge that prior violence (or threats of violence) by [her former partner] towards the applicant had so affected her as to provide an explanation for the offending. The profound and long-lasting psychological effects of domestic violence are well-established and, where a proper evidentiary basis is established, can have a very significant impact on the court’s view of the culpability of an offender and may even preclude criminal responsibility.

[41] But that was not this case. As defence counsel properly conceded on the plea, there was no such evidence. There was no suggestion, for example, that the applicant had been driven to act in this way by things done to her *during* the marriage. On the contrary, all the evidence showed that what prompted this attack was the *ending* of the marriage and [her former partner’s] commencement of a relationship with another woman.