

## ***DPP (Victoria) v Paulino (Ruling No 1) [2017] VSC 343 (17 June 2017) – Victorian Supreme Court***

‘Admissibility’ – ‘Relationship evidence’

Charges: Murder.

Case type: Pre-trial hearing.

Facts: The defendant and deceased had been in a relationship, and had two children ([3]). They separated acrimoniously in 2010 ([3]). The defendant was accused of murdering the deceased. The prosecution wished to lead evidence relating to the relationship between the accused and deceased ([4]) in order to establish that the accused’s enmity and hatred towards the deceased was the motive for the murder ([5]). The evidence included: threats made by the defendant; relationship evidence; the fact that the accused had an intervention order taken out against him by the deceased; and the accused’s actions in relation to a pornographic video allegedly depicting the deceased.

Issues: Whether the ‘relationship evidence’ should be admitted.

Decision and Reasoning: Justice Bell set out the relevant principles in relation to the Court’s mandatory duty to exclude evidence where the probative value is outweighed by the danger of unfair prejudice to the accused (see [33]-[36]). In this context, evidence of a poor relationship between the accused and deceased has been admitted where that evidence may be relevant to whether the accused killed the deceased and whether the accused had a motive to do so ([37]).

### Threats

The deceased’s statements about her fear of the accused (for example, that if something happened to her, it would be because of the accused) were not admissible. In deciding the admissibility of a victim’s fear of the accused perpetrator, the issue is ‘whether the evidence of the deceased’s fear of the accused was relevant to the probability of the existence of a fact in issue, usually whether the accused had a motive for killing, and actually did kill, the deceased’ ([57]). However, the statements were merely evidence of her subjective state of mind, not the accused’s ([70]). Further, the content and volume of evidence would be highly prejudicial to the accused ([71]).

By contrast, evidence of threats made by the accused to kill the deceased and her family were admissible, because it was relevant to the accused’s state of mind towards the deceased ([76]).

### Relationship evidence

Evidence of the defendant's feelings of hatred and enmity towards the deceased was admissible ([42]-[43]). However, most the evidence of the state of their marriage before 2010 was not relevant ([41], [51]). Bell J held that the jury should be told generally that the marriage was unhappy ([85]-[87]), but not the precise details of the aggressive behaviour of the accused ([88]).

#### Intervention order

Evidence of the intervention order was admissible as a feature of the relationship leading up to the death of the deceased ([91]). There was a danger of unfair prejudice to the accused, but that could be mitigated by proper instruction ([92]).

#### Pornographic video

The accused had alleged that the deceased had participated in a pornographic video, and had shown his colleagues and the deceased's family ([94]). Evidence of the video and the accused's actions were admissible to demonstrate the extremely negative attitude of the accused towards the deceased ([96]).