

***R v Stone (Ruling No 1)* [2018] VSC 625 (19 October 2018) – Victorian Supreme Court**

‘Evidence’ – ‘Fair hearing and safety’ – ‘Physical violence and harm’ – ‘Relationship, context, tendency and coincidence evidence’

Charges: Murder x 1.

Proceeding type: Ruling as to the admissibility of evidence.

Facts: The accused allegedly murdered the victim (her defacto partner) by dousing him with fuel thinner and setting fire to him. Their relationship spanned approximately 25 years. The accused claimed that a Mr Baxter murdered the victim. The question before the Court was whether the accused was the murderer. The prosecution sought to lead evidence from the deceased’s mother as to the nature of the relationship between the accused and the deceased. That evidence included 1) that the mother observed instances of verbal and physical abuse between the deceased and accused over a number of years; 2) that in 2010, the mother observed a particular argument between the deceased and the accused in which the accused physically assaulted the deceased before the deceased’s brother intervened; and 3) that in November 2016, the mother received a phone call from the deceased, claiming that he was fearful for his own life. The prosecution filed a Hearsay Notice with respect to the ‘November 2016 incident’. [Sections 65\(2\)\(b\)](#) and [66A](#) of the *Evidence Act 2008* (Vic) were relied upon as the path to admissibility.

Issues: Whether the deceased’s mother’s observations of instances of verbal and physical abuse between the accused and the deceased were admissible; Whether the probative value of the evidence is outweighed by the danger of unfair prejudice to the accused; Whether the representations made by the deceased to his mother concerning an earlier incident with the accused are admissible.

Decision and reasoning: The prosecution argued that the deceased’s mother’s evidence was admissible as relationship and context evidence in that evidence of the poor relationship between the accused and the deceased could rationally affect the assessment of the probability of the existence of the question in issue, namely whether the accused killed the deceased. The accused argued that the relationship evidence was not relevant and that the evidence of the November 2016 incident failed to satisfy the tests specified in s 65(2)(b) and s 66A of the Act ([7]).

On an analysis of the particular evidence, Taylor J made the following observations:

- Evidence of the general poor relationship between the accused and the deceased was relevant to the probability of the existence of the question in issue. However, owing to the vagueness of the general

relationship evidence, its probative value was low and was outweighed by the danger of unfair prejudice to the accused. Therefore, such evidence was excluded under [s 137](#) of the Act.

- > The evidence of the 2010 incident was irrelevant and was therefore excluded by the operation of [s 56\(2\)](#) of the Act. The lack of relevance was a result of the fact that the accused was claimed to have threatened the deceased's brother with a knife, rather than the deceased herself.
- > The evidence regarding the November 2016 incident, although hearsay, was admissible pursuant to [s 65\(2\)\(b\)](#). It was sufficiently proximate to the alleged incident and revealed the state of the relationship between the accused and the deceased, as well as the deceased's fear of the accused in the months preceding her death. It was 'extremely unlikely that the representation was a fabrication' ([31]). The evidence was also admissible pursuant to [s 66A](#) of the Act.