

***R v Stone (Ruling No 2) [2018] VSC 626 (19 October 2018)* – Victorian Supreme Court**

‘Evidence’ – ‘Fair hearing and safety’ – ‘Incriminating conduct’ – ‘Physical violence and harm’ – ‘Post-offence conduct’

Charges: Murder x 1.

Proceeding type: Ruling as to the admissibility of evidence.

Facts: The accused allegedly murdered the victim 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 filed a Notice, pursuant to [s 19](#) of the *Jury Directions Act 2015 (Vic)*, of its intention to adduce evidence of incriminating conduct, namely, the lies told by the accused in describing the circumstances of the deceased's death, and the accused's authorship of a letter purporting to be under the hand of Amanda Thatcher and which implicated Mr Baxter in the death of the deceased.

Issues: Whether the evidence of the conduct is reasonably capable of being viewed by the jury as evidence of incriminating conduct.

Decision and reasoning: The Court held that there was sufficient evidence on which the jury could be satisfied that the accused's multi-faceted statement as to how the incident took place was deliberately false. The conduct relied on by the prosecution was much more than a bare denial of guilt, and amounted to a detailed account of the deceased's death. Therefore, the jury could conclude that the only reasonable inference that could be drawn from the evidence was that the accused believed that she committed the offence. Accordingly, the prosecution was allowed to rely on the conduct specified in its notice, namely the lies told by the accused describing the circumstances of the deceased's death, as evidence of incriminating conduct ([24]-[27]).