

***DPP v McDermott* (Rulings Nos 10 & 11) [2016] VSC 822 (27 April 2016) – Victorian Supreme Court**

‘Anti-tendency warning’ – ‘Murder’ – ‘Prejudicial evidence’ – ‘Propensity evidence jury discharge’

Charges: Murder.

Case type: Application to discharge jury.

Facts: The defendant was on trial for stabbing his former partner. His son gave evidence that the defendant usually carried a knife. Defence counsel applied to discharge the jury on the ground that the ‘propensity evidence’ was highly inflammatory and could not be cured by a direction ([2]). The next day, a newspaper article was published about the son’s evidence ([35]-[36]).

Issues: Whether the jury should be discharged.

Decision and Reasoning: Jane Dixon J declined to discharge the jury ([31], [45]). Her Honour considered that any prejudice to the accused could be cured by a direction to the jury ([31]). Her Honour gave two anti-tendency warnings ([35], [43]), and intended to give another curative direction in her Honour’s final address ([44]).