

***Liyanage v Western Australia* [2017] WASCA 112 (22 June 2017) – Western Australia Supreme Court (Court of Appeal)**

‘Expert evidence’ – ‘Risk’ – ‘Social context evidence’ – ‘Social worker’

Charges: Manslaughter x 1.

Appeal type: Appeal against conviction and sentence.

Facts: The appellant and the deceased were married. The appellant killed the deceased by striking him with a mallet [1]. The appellant gave evidence that the deceased was violent and controlling, and regularly sexually assaulted her [2]. She had no memory of the night on which she killed the deceased [47]. At trial, she was found not guilty of murder, but guilty of manslaughter [4]. She was sentenced to 4 years’ imprisonment [5].

Issues: The appellant appealed on several grounds including that the trial judge should not have excluded evidence from a social worker about domestic violence [7].

Decision and Reasoning:

All grounds of appeal were dismissed.

Social worker’s risk assessment evidence

The social worker’s risk assessment evidence was in relation to the psychological impact of prolonged exposure to domestic violence (popularly known as ‘battered women’s syndrome’). The evidence was based on a risk assessment which used actuarial risk assessment tools and clinical guides, including the ‘Power and Control Wheel’ (see [Chapter 4 Context Statement](#)) ([108]). The Court held that: the evidence did not explain the appellant’s state of mind ([123]-[129]); that the evidence did not quantify the extent of the risk, and did not specifically address the question of the risk of homicide ([130]-[148]); and the actuarial tools had not ‘been accepted by the relevant scientific community’ as defining the risk of homicide ([149]-[154]).

Social context evidence

The Court remarked that there is a body of academic literature that is supportive of 'social context evidence' in family violence cases ([160]). This may include evidence about the history of the parties' relationship, the defendant's culture, the non-psychological impediments to leaving a violent relationship ([160]-[165]). However, the Court emphasised that in order for contextual evidence to be admitted, counsel must 'explain precisely and specifically how it is relevant to the issues which the jury are required to decide' ([166]).

The social worker gave evidence in relation to the dangers of leaving a domestic violence relationship ([169]-[177]) and the exercise of power and control which characterises domestic and family violence ([178]-[183]). The Court held that the evidence was too general, and would not assist the jury beyond the knowledge and inferences able to be drawn by a reasonable person ([177],[183]).