***R v Susec* [2013] QCA 77 (12 April 2013) – Queensland Court of Appeal**

'Evidence' – 'Hearsay evidence' – 'Murder' – 'Physical violence and harm' – 'Post-offence conduct' – 'Probative value' – 'Relationship evidence' – 'Separation'

Charge/s: Murder.

Appeal Type: Appeal against conviction.

Facts: The appellant was convicted by a jury for the murder of his wife, and sentenced to life imprisonment (see further at [5]-[25]). It is unclear whether at the time of the offence, there was a current or lapsed protection order against the appellant in favour of his wife.

Issue/s:

1. Whether the trial judge should have admitted evidence of a previous incident of the appellant sharpening a knife in the presence of the deceased and two witnesses.
2. Whether evidence of the victim's statement that she believed her husband was going to kill her was admissible.
3. Whether evidence of a conversation between the deceased and a co-worker, which was initially held to be hearsay evidence because it was too vague and unreliable but later inadvertently admitted during the questioning of the co-worker at trial resulted in a miscarriage of justice.
4. Whether a conclusion that the appellant's post-offence conduct involved inflicting wounds on himself, putting pepper in his own eyes and exaggerating the seriousness of his condition was open on the evidence.

Decision and Reasoning:

1. Gotterson JA (with whom McMurdo P and Muir JA agreed) held that such evidence was admissible under s 132B of the *Evidence Act 1977*. Its probative force was not outweighed by its potential prejudice to the accused. It was relevant to the state of the relationship, as well as to self-defence and provocation. It did have subjective elements, (such as the witnesses' descriptions of their emotions during the incident), but this was not such as to enliven the s 130 discretion to exclude it, and the trial judge gave a sufficiently clear warning against its use as propensity evidence.
2. The Court held that this evidence was admissible. The deceased's fear of the appellant was relevant to the jury's consideration of whether the deceased initiated an assault or provoked the attack.
3. While the Court held that this evidence should not have been admitted, it did not amount to a miscarriage of justice so this ground was dismissed.
4. The Court held that this conclusion was clearly open on the evidence (see at [70]).