This is the published version:


Available from Deakin Research Online:

http://hdl.handle.net/10536/DRO/DU:30043977

Reproduced with the kind permission of the copyright owner

Copyright : 2009, Monash University
‘Till Death do us Part: Judging the men who kill their intimate partners

Kate Fitz-Gibbon, Monash University

Abstract

This paper examines the construction of masculinity in judge’s sentencing remarks across seventeen cases of male perpetrated intimate femicide sentenced between March 2005 and May 2007 in the Victorian Supreme Court. Using a narrative analysis of sentencing transcripts it investigates how ideal understandings of hegemonic masculinity are used in judicial decision making to condemn or sympathise with male offenders of intimate femicide. The findings illustrate the profound influence that traditional understandings of masculinity and fatherhood still have on current sentencing practices despite the current climate of homicide law reform both within Australia and overseas. Whilst this paper did not directly assess the impact of recent homicide law reforms, specifically provocation, it is explicitly concerned with the continued influence of gender norms and bias at the sentencing stage of the legal process. As such, it provides a preliminary illustration of the key role that judges play in advocating or rejecting change within the criminal justice system, and more broadly legitimising attitudes about male violence against women throughout society. In condoning the use of extreme violence, in any context, judges send a message to society that such behaviour is either generally or specifically acceptable and accommodated within a legal framework.

Introduction

This paper discusses the influence of hegemonic masculinity and the continued legitimisation of lethal violence against women in the sentencing of men convicted of intimate femicide within the Victorian criminal justice system. Based on a narrative and thematic analysis of seventeen sentencing judgments of intimate femicide from 2004 to 2007 in the Victorian Supreme Court, it argues that through a mobilisation of ideal understandings of masculinity judges risk continuing to excuse the use of lethal domestic violence despite homicide law reforms (specifically provocation) introduced in 2005 aimed at achieving otherwise.

Throughout this paper ‘intimate partner’ is defined as encompassing all current or estranged partners, inclusive of married, defacto and girlfriend/boyfriend relationships. Using this definition, intimate femicide is conceptualised as the killing of a female intimate partner by her male partner. This definition is in line with previous definitions used by both Polk (1994) and the National Homicide Monitoring Reports produced annually by the Australian Institute of Criminology (AIC 2009).

According to the most recent National Homicide Monitoring Report [NHMP] as of June 2007 intimate homicides accounted for twenty-two percent of homicides annually and a slightly higher twenty-five percent within Victoria (Dearden & Jones 2008). Within these statistics there is a clear gender disparity.

1 PhD Candidate, Monash University. Email: Kate.Fitz-Gibbon@arts.monash.edu.au
across both the victim and offender categories, with intimate homicides perpetrated in majority by a male offender upon a female victim. Statistically, between 2006 and 2007, in Australia fifty-three percent of female homicide victims were killed by an intimate partner (Dearden & Jones 2008). Such statistics highlight the profound danger that intimate femicide poses to women within Australia, particularly those caught in intimate relationships that foster abusive behaviour.

The Provocation Defence: A history of gender bias and law reform

In investigating the interaction between the criminal justice system and intimate femicide a significant amount of attention has been focused upon the provocation defence and its role in providing a partial defence to murder for men who kill their female partners. Traditionally the defence of provocation has been available as a partial defence to homicide for men or women who kill without premeditation as a loss of self control following an immediate provoking situation or behaviour (Kissane 2004). Over the past decade, however, the defence has come to be closely associated with so-called ‘crimes of passion’ – the trials of men who have killed to assert extreme control over a female partner in the context of estrangement, infidelity and separation (Bradfield 2003; Brown 1999; Coss 1996; McSherry 2005). These trials and the use of the defence have become the focal point of debates at a state, national and international level where critics have argued for either the complete abolition of the defence (Burton 2001; Coss 2006) or the need for reform to limit its availability and applicability in certain situations (Brown 1999; Eburn 2001; Horder 2005; McSherry 2005; Narayan & von Hirsh 1996). Arguments in favour of reform rather than outright abolition have focused on the role of the provocation defence in providing a legal avenue of understanding for battered women who kill an abusive male partner (Bradfield 2003; Horder 2005). However, whether arguing for the abolition or continuation of the defence, researchers have been unanimous in describing the defence of provocation as a gender biased vehicle that typically allows a female victim of homicide to be put on trial and her words alone to be used to excuse the use of male lethal domestic violence (Coss 2006).

Specifically in Victoria, between 1990 and 2005, ten homicide offenders, all male, successfully argued the defence of provocation and received a manslaughter conviction with an average sentence of 7 years and
11 months (Sentencing Advisory Council 2007). In comparison to the state imposed average for a murder conviction for intimate femicide, which is 18 years and 10 months, these sentences were extremely favourable (Sentencing Advisory Council 2007). Following significant debate and controversy surrounding the defence, the Victoria Law Reform Commission [VLRC] conducted a review of provocation in 2004. This review culminated in the 2004 release of a final report, ‘Defences to Homicide’, that recommended the abolition of the defence alongside other reforms targeting partial defences to homicide.

The abolition of provocation was implemented in the Victorian criminal justice system in November 2005 following amendments to the Crimes (Homicide) Act 2005 (Vic). This occurred in the wake of two controversial trials of intimate femicide; that of James Stewart Ramage in 2004 (R v Ramage [2004] VSC 508, hereinafter Ramage) and Mazin Yasso in 2005 (R v Mazin Yasso [2005] VSC 75, hereinafter Yasso 2005). Both cases were pivotal in creating public awareness and debate surrounding the biases associated with the defence of provocation.

Learning from the past: Ramage and Yasso

The successful use of the provocation defence in Ramage highlights the dangers of the defence in putting the female victim on trial and using her words alone to legitimise the use of lethal male domestic violence. Ramage ‘lost control and attacked’ his estranged wife, Julie, following a discussion in which she admitted to a new relationship and ‘either said or implied how much better sex with her new friend was’ (Ramage, per Osborn J at p.4). Alongside his description of the victim’s last words the judge described Ramage as a man of ‘generally good character’ (Ramage, per Osborn J at 13) whose ‘life was on the face of it a success story’ (Ramage, per Osborn J at p.9) and it was because of the confrontation with his wife that he had been ‘provoked to rage and anger’ (Ramage, per Osborn J at 5).

Conversely, in the trial of Mazin Yasso key issues pertaining to the cultural use of the defence were raised (Maher et al 2005). Yasso argued that his estranged wife, Eman Hermiz, spitting in his face in a public shopping centre provoked his response of stabbing her twelve times in the ‘area of the neck and chest’ (Yasso 2005, per Hollingworth J at 9). In his initial trial Yasso was convicted by the jury of murder (R v Yasso [2002] VSC 468) despite attempts to allege that the victim’s provoking behaviour had caused his
loss of self-control. Although Yasso successfully appealed this initial murder conviction on the basis that provocation should have been left to the jury, in his second trial he was again convicted of the murder of his wife with the judge noting that ‘the jury were satisfied beyond reasonable doubt that you did not kill your wife in circumstances amounting to provocation’ (Yasso 2005, per Hollingworth J at 14).

Both the trials of Yasso and Ramage raised public awareness throughout the media as to the potential dangers of gender bias inherent within the defence of provocation (Maher et al 2005).

Recommendations of the Victorian Law Reform Commission: How far have we come?

In abolishing the use of the defence the Victorian Law Reform Commission (2004) recommended that issues pertaining to provocation should continue to be considered by judges in sentencing. Since its release this recommendation has been a point for criticism and concern throughout research (McSherry 2005; Bradfield 2003; Stewart & Freiberg 2008) and is central to this paper’s key concern of continued judicial legitimisation of lethal domestic violence. By moving provocation to sentencing, judges must consider provocation alongside other mitigating and aggravating factors (Stewart & Freiberg 2008). As cautioned by Stewart and Freiberg (2008) it is essential that the problems historically associated with the defence do not continue to exist throughout the sentencing process. In ensuring that this does not happen, Stewart and Freiberg (2008) suggest that ‘old assumptions will need to be discarded and a new normative framework must be developed’ (2008:2). If the problems traditionally associated with the provocation defence are merely moved to sentencing this paper argues that there is a clear danger that judges will continue to be able to legitimise intimate violence that occurs in the context of male possessiveness, sexual jealousy and the overriding need for control. How then have we stepped away from the gender bias and victim trials originally associated with the defence of provocation? The answer – potentially we have not – the label of provocation and the role of the jury have purely been removed.

Research Findings

In researching the continuation in the use of provocation-like defences in the justice system, this paper aimed to determine how traditional ideals of hegemonic masculinity, as explored through the theoretical framework of Collier (1995, 1998) and Connell and Messerschmidt (2005), are used to sympathise or
condemn the lethal actions of male offenders of intimate femicide throughout the sentencing process. Through the use of a narrative and thematic analysis of Victorian sentencing judgments for men convicted of intimate femicide between July 2004 and June 2007, four models of masculinity were identified as mobilised throughout judicial sentencing. These models were jealous, familial, deviant and deceptive masculinity and were representative of the degree to which these men either conformed or deviated from societal understandings of hegemonic masculinity. The analysis revealed that where a male had conformed to a hegemonic model of masculinity prior to committing intimate femicide, his use of fatal violence was understood as an excusable aberration in his otherwise ideal character, an aberration that was typically understood as bought upon by the actions or behaviour of the victim herself.

Throughout the analysis continued legitimisation of lethal violence became particularly apparent throughout the jealous and familial models of masculinity, where across a number of sentencing judgments the male offender was not condemned as a wife killer or domestically abusive husband but rather sympathised with as a desperate man who loved the woman who was leaving him, as a husband devastated to learn of his wife’s infidelity or in the model of familial masculinity, as a good father who loved his children and had done all he could to provide them with a stable home life but had been pushed to his limits. A trend that is also recognised in research surrounding Australian offenders and the death penalty (Strange 2003). This paper is focused upon the continued legitimisation of domestic violence within the model of familial masculinity.

Familial Masculinity and the Legitimisation of Intimate Femicide

The model of familial masculinity was framed by Collier’s (1995) extensive research on familial masculinity whereby the traditional notion of the ideal father is as the protector and provider of his family. By killing not only their partner but in all of the cases within this model the mother of their children these men should stand as a clear contradiction of traditional understandings of fatherhood. However, the analysis revealed that where the offender was perceived by the judge to have been a good father prior to committing intimate femicide he was sympathised with throughout sentencing despite his
crime. A finding that has been previously highlighted in Australian-based sentencing research by Easteal (1993).

By positioning such offenders as the key provider and protector of their family the judge’s comments serve to humanise these men in light of the brutal crime committed. In turn, the judicial sentencing remarks often position the female victim as either to blame for the fatal crime committed or as an inadequate mother prior to her death. These constructions act as an echo of prior narratives of provocation whereby the deceased female victim continues to be put on trial and her behaviour and actions are used to create a sympathetic understanding of the offender’s lethal actions.

**Case in Point: the Sentencing of Dallas Rhodes**

To illustrate the influence of ideals of fatherhood in sentencing, alongside the continued problematic trend of judicial legitimisation of violence, this paper looks directly at the sentencing of Dallas Rhodes (*DPP v Dallas Rhodes* [2007] VSC 55, hereinafter *Rhodes*). Rhodes was sentenced in the Victorian Supreme Court in March 2007, almost a year and a half after the abolition of provocation. Rhodes plead guilty to the manslaughter of his wife in what was described as a ‘spontaneous, impulsive act’ of lethal violence following a domestic dispute about money (*Rhodes*, per Curtain J at 2). In sentencing Rhodes the judge positioned him as ‘devoted’ to his children, as the ‘principal carer’, as wanting to provide them with a ‘stable home life’ (*Rhodes*, per Curtain J at 3), which he sympathises that ‘sadly, as a result of your actions...is now lost to you’ (*Rhodes*, per Curtain J at 3). Emphasising that there is much that is ‘sad and tragic’ about his case (*Rhodes*, per Curtain J at 3), the judge highlighted that Rhodes had suffered a physically and verbally abusive childhood which motivated him ‘to provide a stable environment’ for his own children (*Rhodes*, per Curtain J at 2). Conversely, in describing the victim the judge positions her as inadequate in her role as a mother and turbulent as a partner, where at times he comments the relationship was ‘volatile and tempestuous principally, it appears, as a result of Michelle’s erratic behaviour’ (*Rhodes*, per Curtain J at 1). This comment serves to position the victim as responsible for conflict and upheaval within the family environment. The sentencing remarks, however, look only briefly
at the incident of lethal violence where Dallas Rhodes, the good father, stabbed his wife with the kitchen knife in their family home while both their children were at home.

The sentencing of Dallas Rhodes is a classic snapshot of the female deceased victim being put on trial whilst her killer’s use of lethal violence is legitimised, excused and sympathised with. Where Rhodes is seen to have adhered to an acceptable form of masculinity in line with society’s expectations of both a husband and a father, his victim is condemned as an inadequate form of femininity. It is through this condemnation of the victim that the use of lethal domestic violence against her is excused by the court system. In comparison to the state average over the past fifteen years for manslaughter, which is seven years and one month (Sentencing Advisory Council 2007), Dallas Rhodes received a sentence of six years imprisonment with a non parole period of four years, a term potentially three years less than the state imposed average.

In analysing the sentencing of Dallas Rhodes the question must be asked; why within the Victorian criminal justice system does it still appear excusable for a man to kill a woman who is leaving him, who has been unfaithful to him or in the case of Rhodes who is challenging his authority? It is within any individual’s rights to terminate and safely leave an intimate relationship, however, within the Victorian criminal justice system, and more broadly the Australian court system, the use of lethal violence against such women is excused and further, our judges condemn them as unfaithful wives, as bad mothers and as contradictory of ideal constructions of femininity.

**Practical Implications and Recommendations**

The implications of this research are twofold. Firstly, the research highlights the profound influence that traditional ideals of masculinity have in the sentencing of men convicted of intimate femicide within Victoria. In doing so, this paper illustrates how understandings of hegemonic masculinity can be used to assign blame or sympathy to the character of the offender throughout the sentencing process. In sympathising with the jealous male or the good father, as seen in the trials of Ramage and Rhodes, and more broadly in the models of jealous and familial masculinity, the judge’s remarks serve to legitimise the use of lethal violence by the male offender in light of his otherwise conforming character. In condoning
the use of lethal violence in any context judges risk sending a message to society that such behaviour is not only acceptable but also excused within the framework of the law. The influence of sentencing remarks are widespread as they are continuously used by the media as a window for the public to guide what are acceptable and unacceptable forms of masculine violence within our society.

Secondly, this paper looks critically at the implementation of law reform surrounding the abolition of provocation within Victoria, and in doing so, stresses the need for a strict and formal evaluative system to ensure that the problems historically associated with this defence do not continue to be mobilised through the sentencing of men convicted of intimate femicide. Where law reform is legislatively implemented it is essential that there is an actual change evidenced in practice. Such change could be potentially achieved through re-education systems whereby the key stakeholders involved are educated as to the initial need for the reform and how to achieve the necessary outcomes of change. Additionally, the use of formal evaluative systems would ensure over time that the reform continues to be upheld and that the original needs for its implementation continue to be met and addressed.
References


Crimes (Homicide) Act 2005 (Vic).


Easteal P. W 1993 Killing the beloved: homicide between adult sexual intimates Australian Institute of Criminology Canberra ACT.


Kissane K 2004 ‘Honour killings in the suburbs’ The Age 6 November p.4.


List of cases

DPP v Dallas Rhodes [2007] VSC 55

R v Mazin Yasso [2005] VSC 75

R. v. Yasso [2002] VSC 468

R v Ramage [2004] VSC 508