



Research Brief *Intimate Partner Homicide*

Introduction

This research brief uses a critical feminist standpoint to explore recurrent limitations in the justice system, specifically in regard to Intimate Partner Homicide. Focusing on the Middendorp case, which took place in 2010, this brief will summarise the background first of the provocation defence and the offence of defensive homicide (later abolished) and outline the facts and outcome of the Middendorp case. It seeks to interrogate persistent gender biases in legal responses to intimate partner homicide.

Background

Provocation case law and legislation has been at the centre of many legal and social controversies. The law systematically disadvantages women experiencing violent death at the hands of their partners, privileging men who cite 'loss of control' (Maher 2014). The provocation defence was repealed in 2005 in Victoria, which became the second Australian state to do so (Fitz-Gibbon 2012; Flynn & Fitz-Gibbon 2011; Tyson 2011, 2012). The offence of defensive homicide was introduced in 2005 in Victoria to address gender biases in provocation and was initially celebrated as a progressive move. However, in 2010 this legislation too came under sustained criticism in regards to the Middendorp case. In 2014, the Victorian parliament passed the Crimes Amendment (Abolition of Defensive Homicide) Act 2014 (Vic), abolishing the offence.

Case

Middendorp alleged that he stabbed his partner Jade Bownds in the back after she came at him with a knife. Afterwards, he was heard stating that she was a 'filthy slut' who 'had it coming' and 'got' what she 'deserved' (Crofts & Tyson 2014, p. 887).

Outcome

Luke Middendorp was acquitted of murder and convicted of defensive homicide of his former partner Jade Bownds (R v Middendorp [2010] VSC 202) (Maher 2014).

Issue

Legislation that was originally intended to protect female victims of intimate partner violence was used to mitigate Middendorp's sentence in the following ways (Maher 2014):

1. Jury ruled that Middendorp genuinely believed that he was fatally threatened by his former partner
2. Social context evidence was used to show violence of parties was mutual
3. Narrative of troubled young woman diminished culpability of Middendorp.

The Problems of Gendered Defences and Offences

Using a feminist jurisprudential approach to expose the persisting gendered biases in relation to intimate partner homicide, Fitz-Gibbon, Tyson and McCulloch (2014) rewrote the

sentencing judgement. Their focus was in line with the original intent of the defensive homicide legislation, which was to better protect women experiencing family violence.

This new sentencing judgement focused on factors unaddressed in the original sentence, such as:

1. Middendorp's history of family violence against his ex-partner Jade Bownds
2. Middendorp's breach of a standing Family Violence Order
3. Middendorp's actions after stabbing the victim in the back
4. Victim impact statements.

Terms

Provocation: Provocation, or the partial defence of provocation, is used to reduce murder to manslaughter, specifically in cases where the offender responds to a provocative situation or behaviour with lethal violence, presumably because the provocation resulted in their losing control (VLRC 2004). Feminist critiques of these laws have highlighted that the defence is highly gendered and often used by men to defend or excuse the murder of their intimate partners (Fitz-Gibbon & Pickering 2012, p. 162; Maher et al. 2005).

Defensive Homicide: After concerns emerged that battered women who kill their violent partners would be 'disadvantaged' in abolition of provocation, the VLRC recommended a 'partial defence of excessive self defence' (Fitz-Gibbon & Pickering 2012, p. 164). Immediately after the partial defence of provocation was repealed, Victoria introduced the new offence of defensive homicide (Crimes (Homicide) Act 2005 (Vic) s. 9AD)). Despite being celebrated as a shift away from the gendered law of provocation, what emerged in 2010 was that defensive homicide was mostly being used in cases where men killed other men, rather than in cases where women kill their intimate partners (Department of Justice 2010).

Social Context Evidence: Under the Defensive Homicide legislation, 'social context evidence' was allowed, which is wider in scope than types of evidence conventionally accepted in intimate partner homicide cases (Maher 2014).

Cases

R v Middendorp [2010] VSC 202

Legislation

Crimes Amendment (Abolition of Defensive Homicide) Act 2014 (Vic)
Crimes (Homicide) Act 2005 (Vic)

References

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