https://www.crimejusticejournal.com/ *International Journal for Crime, Justice and Social Democracy*
Volume **13** (4) 2024 https://doi.org/10.5204/ijcjsd.3538

Identifying Evidentiary Checkpoints and Strategies to Support Successful Acquittals for Women who Kill an Abusive Partner During a Violent Confrontation

Rachel Dioso-Villa and Caitlin Nash
Griffith University, Australia

Abstract

This study examined 32 Australian cases of women prosecuted for killing their abusive male partners in self-defence between 2010 and 2023. The objective was to track the legal pathways and identify salient factors influencing both acquittals and convictions. While most women received a manslaughter conviction by pleading guilty, nearly all cases that proceeded to trial resulted in no conviction. Key findings include: the utility of partial defences as a safety net for self-defence; evidence of overcharging; the identification of "evidentiary checkpoints" at trial to downgrade or withdraw murder charges; a checklist for legal counsel advising clients on the risks of trial; the advantage of private legal counsel in successful self-defence claims; and the systemic disadvantage of Indigenous women, highlighting the need for continued research. These findings underscore the intricate dynamics within the legal system when addressing cases of intimate partner violence, emphasising the need for comprehensive reforms and support structures.

Keywords: Self-defence; wrongful conviction; intimate partner homicide; domestic violence; miscarriages of justice.

Introduction

Around the world, domestic abuse among intimate partners represents one of the most prevalent and damaging forms of violence against women, often leading to fatal consequences (Cullen et al. 2019; Stöckl et al. 2013). While women are disproportionately victims of intimate partner homicide, when women kill a male partner, it is most often out of fear and self-preservation in response to prolonged domestic abuse (Australian Domestic and Family Violence Death Review Network 2018). However, despite the apparent relevance of self-defence, women who kill their abusers often find themselves incarcerated for their defensive violence, with their actions rarely considered within the framework of self-defence (Centre for Women's Justice 2021; Nash and Dioso-Villa 2023). There has been considerable academic attention and targeted legal reforms aiming to improve access to self-defence claims for women who kill an abusive partner (e.g., see Crofts and Tyson 2013; Fitz-Gibbon 2022; Hopkins and Easteal 2010; Naylor and Tyson 2017). However, laws and legal systems have persistently failed to acknowledge and accommodate the specific experiences of these women (Douglas 2012; Edwards and Koshan 2023; Tarrant et al. 2019; Tyson et al. 2017). Instead, inadequate understandings and misconceptions surrounding domestic abuse continue to create significant challenges for survivors to establish self-defence claims, with research showing that many women with legitimate justifications for self-defence still receive criminal convictions for homicide (Nash and Dioso-Villa 2023; Sheehy 2014; Sheehy et al. 2012; Tarrant 2021; Tyson et al. 2017). Indeed, a common legal outcome for women who kill in the context

of abuse is to plead guilty to manslaughter in exchange for the prosecution withdrawing murder charges. This has promoted concerns among scholars about prosecutorial overcharging practices and pressured guilty pleas (Nash and Dioso-Villa 2023; Sheehy 2014; Sheehy et al. 2012).

This study aims to improve legal outcomes for women who resort to lethal violence in response to domestic abuse by identifying factors that may facilitate or obstruct successful self-defence claims. We investigate the legal pathways of 32 cases characterised by "traditional" self-defence scenarios, wherein the accused woman killed her abusive male partner during or immediately following a violent confrontation, thereby meeting the criterion of an immediate threat of harm. By tracking the legal pathways of individual cases and exploring the factors that contributed to either the acquittal or conviction, the findings can provide necessary insights for identifying "evidentiary checkpoints" where charges can be downgraded or withdrawn, providing crucial guidance for legal proceedings. Additionally, by identifying the common factors salient in acquittals, this can provide strategic guidance for women and their legal counsel about what could support or hinder their chances of an acquittal at trial. These findings are pivotal in informing future reforms and refining best practices to better support women navigating self-defence claims in the context of domestic violence.

Barriers to Self-Defence

Much has been written about the legal barriers women who kill in the context of abuse can face in having their experiences properly recognised and accommodated within the framework of self-defence. One major critique is the male-centric nature of the defence, with the traditional requirements of imminence and proportionality developed around male experiences of violence (Edwards 2023; Edwards and Koshan 2023; Fitz-Gibbon and Vannier 2017; McPherson 2022). While these concepts have comfortably accommodated men killing other men of equal strength in public, they have operated to exclude the nuanced experiences of women who react to ongoing domestic abuse that often occurs in private (Hopkins et al. 2017; Howes et al. 2021; McPherson 2022; Victorian Law Reform Commission 2004). Due to discrepancies in size and experience of abuse, women frequently resort to using a weapon to kill their abusive partner and, in some cases, enlist the assistance of others to commit the offence (Centre for Women's Justice 2021; Nash and Dioso-Villa 2023). They can also resort to lethal violence in non-confrontational situations when the threat of harm is not immediate, such as when their partner is asleep or has their back turned (Braun 2017; Hopkins et al. 2017; Victorian Law Reform Commission 2004). As such, without recognising the wider social context in which the offence occurred, their actions can often be interpreted as disproportionate in the immediate circumstances and, therefore, considered unreasonable (Edwards and Koshan 2023; Howes et al. 2021; Kirkwood et al. 2013).

Women are also hindered by persistent myths, stereotypes, and inaccurate understandings of the nature and dynamics of domestic abuse, with women often asked why they did not leave the relationship (Delgado-Alvarez and Sanchez-Prada 2021; Douglas 2012; Fitz-Gibbon and Vannier 2017; Howes et al. 2021; Koshan 2023; Tarrant 2021). Expert testimony on Battered Woman Syndrome (BWS) was originally introduced as a feminist defence strategy to address misconceptions of domestic violence and help explain why lethal violence might be a reasonable response to abuse. Instead, it has faced extensive criticism for pathologising women and their experiences (Butler 2016; Tarrant et al. 2019; Tolmie et al. 2018). Typically presented by psychologists or psychiatrists, BWS evidence tends to portray a woman's actions as a result of an individual deficit or pathology rather than a reasonable response to serious abuse, thereby undermining claims of self-defence (Bradfield 2002; Schneider 2008; Stubbs and Tolmie 1999; Tyson et al. 2017). BWS is also criticised for reinforcing narrow stereotypes of what constitutes a "classic battered woman," legitimising only those who present as victimised, passive, helpless, and compliant (Delgado-Alvarez and Sanchez-Prada 2021). This can further operate to undermine self-defence claims from those who deviate from the stereotypical construction of a "helpless" woman (Goodmark 2008). This may include those who fight back, experience problems with alcohol or drug abuse, have a prior criminal history, or demonstrate autonomous behaviour in other spheres of their lives (Delgado-Alvarez and Sanchez-Prada 2021; Douglas 2012; Fitz-Gibbon and Vannier 2017; Goodmark 208).

Lastly, research shows that women charged with murder are under substantial pressure to plead guilty to manslaughter rather than argue self-defence at trial and risk a murder conviction (Nash and Dioso-Villa 2023; Sheehy 2014; Sheehy et al. 2012; Tyson et al. 2017). Despite the rarity of murder convictions in these cases, studies have found the "overwhelming" majority of abused women are charged with murder even though, in most cases, the prosecution is willing to accept a manslaughter plea (Nash and Dioso-Villa 2023; Sheehy et al. 2012; Tyson et al. 2017). This situation has been described as "overcharging" women who kill an abusive partner (Select Committee on the Partial Defence of Provocation 2013: 157). Research has found many women who pleaded guilty to manslaughter demonstrated strong defensive elements and could have been potentially acquitted based on self-defence, had they gone to trial (Kirkwood et al. 2013; Nash and Dioso-Villa 2023; Sheehy et al. 2012).

Method

This study examined 32 Australian cases of women prosecuted for killing an abusive male partner in traditional self-defence scenarios. The cases were drawn from a larger dataset previously compiled by the authors. This encompassed all documented instances of women prosecuted for killing an abusive male partner in Australia from 2010 to 2020 (*N*=69) (see Nash and Dioso-Villa 2023). For the current study, we selected all cases that involved a female defendant who killed her partner during, or immediately following, a *physical confrontation*. This aligns with the "traditional" requirement of self-defence, involving an immediate threat of harm. Of the original 69 cases, 29 fit within this traditional self-defence scenario and were included in the study. We also conducted supplementary searches of media and legal databases to identify more recent cases, with three additional cases occurring in 2021 and 2022 being added to the dataset.

Of the 32 cases identified, an equal number occurred in Victoria (22%, *n*=7), New South Wales (22%, *n*=7), Western Australia (22%, *n*=7), and Queensland (22%, *n*=7). Two (6%) occurred in South Australia and one (3%) occurred in each of the Northern Territory and Tasmania. The age of the defendant at the time of the offence was known in 31 (97%) cases, with ages ranging from 18 to 59 years old (*M*=35, *SD*=10.8). Based on the information available, at least 10 (31%) of the women were identified as Aboriginal and/or Torres Straight Islanders (henceforth, *Indigenous*). Four (12.5%) were born overseas or were from another cultural or linguistic background (El Salvador, Liberia, Ireland, and England). At least 17 (53%) of the women were diagnosed with a mental health condition, while two (6%) were identified as having a cognitive or intellectual impairment.

Data for this study were extracted from a variety of available sources. This included sentencing remarks (*n*=11); appellate judgements (*n*=5); academic articles or government reports (*n*=10); coronial inquests (*n*=2); and other case law documents, such as evidence admissibility determinations, no case submissions, or prasad directions (*n*=6). In seven cases, information was only available from media articles. Drawing upon the various sources of data, each case was examined and coded for (a) the *legal outcomes*, including the original charge laid, the method of resolution (i.e., guilty plea or trial), and whether the case resulted in a conviction or acquittal. To examine key factors that may have contributed to either the acquittal or conviction, we coded and compared the (b) *Australian jurisdiction* in which the case occurred; (c) the *type of legal representation* provided to the accused; (d) any *supporting evidence of abuse*, such as prior police involvement, medical treatment, and witness statements; (e) the *immediate circumstances of the offence*, including the method of killing and the presence of any substance use; (f) the *relationship characteristics* between the accused and deceased, such as their relationship status and length of relationship; and (g) *characteristics of the accused*, including their Indigenous status, whether they had a prior criminal conviction, and any evidence they had previously fought back. Instances where available data sources did not provide the information necessary were coded as missing and unknown.

The data were analysed descriptively, examining the frequencies of the variables measured. The SPSS statistical analysis software program was employed to conduct a series of cross-tabulations, exploring differences between cases that resulted in an acquittal or conviction. As most women plead guilty to manslaughter rather than raise self-defence at trial, cross-tabulations were also performed to examine whether key differences exist between cases resolved by a guilty plea and those that proceed to trial. By exploring and contrasting differences between the legal outcomes (acquittal vs. conviction) and method of resolution (guilty plea vs. trial), we aimed to better understand and identify key factors that lead to no-conviction outcomes and key turning points in their pathways to resolution to inform the most beneficial and informed choices for women.

Findings

Legal Outcomes

Figure 1 outlines the legal pathways, turning points, and outcomes of the 32 women charged with killing an abusive partner. Nearly all (97%, *n*=31) were originally charged with murder, although some murder charges were downgraded to manslaughter following the committal hearing (*n*=2) or during the trial (*n*=2). The majority (66%, *n*=21) of women received a criminal conviction for their defensive actions, with 20 receiving a manslaughter conviction and one being found guilty of murder. Just under one third (34%, *n*=11) of the women received no conviction for their actions, with eight being found not guilty at trial, two having the charges against them withdrawn by the prosecution, and one having her manslaughter conviction overturned on appeal. Consistent with previous research (Nash and Dioso-Villa 2023; Sheehy 2014; Sheehy et al. 2012), most (86%, *n*=18) of the criminal convictions stemmed from the defendant pleading guilty to manslaughter so the prosecution would withdraw murder charges. Of the 13 (41%) women who proceeded to trial, most (77%, *n*=10) ultimately received no criminal conviction for their defensive actions, either by being acquitted by a jury, the Court of Appeal, or the prosecution dropping charges midway through the trial. The remaining three women were found guilty of manslaughter (15%, *n*=2) or murder (8%, *n*=1).

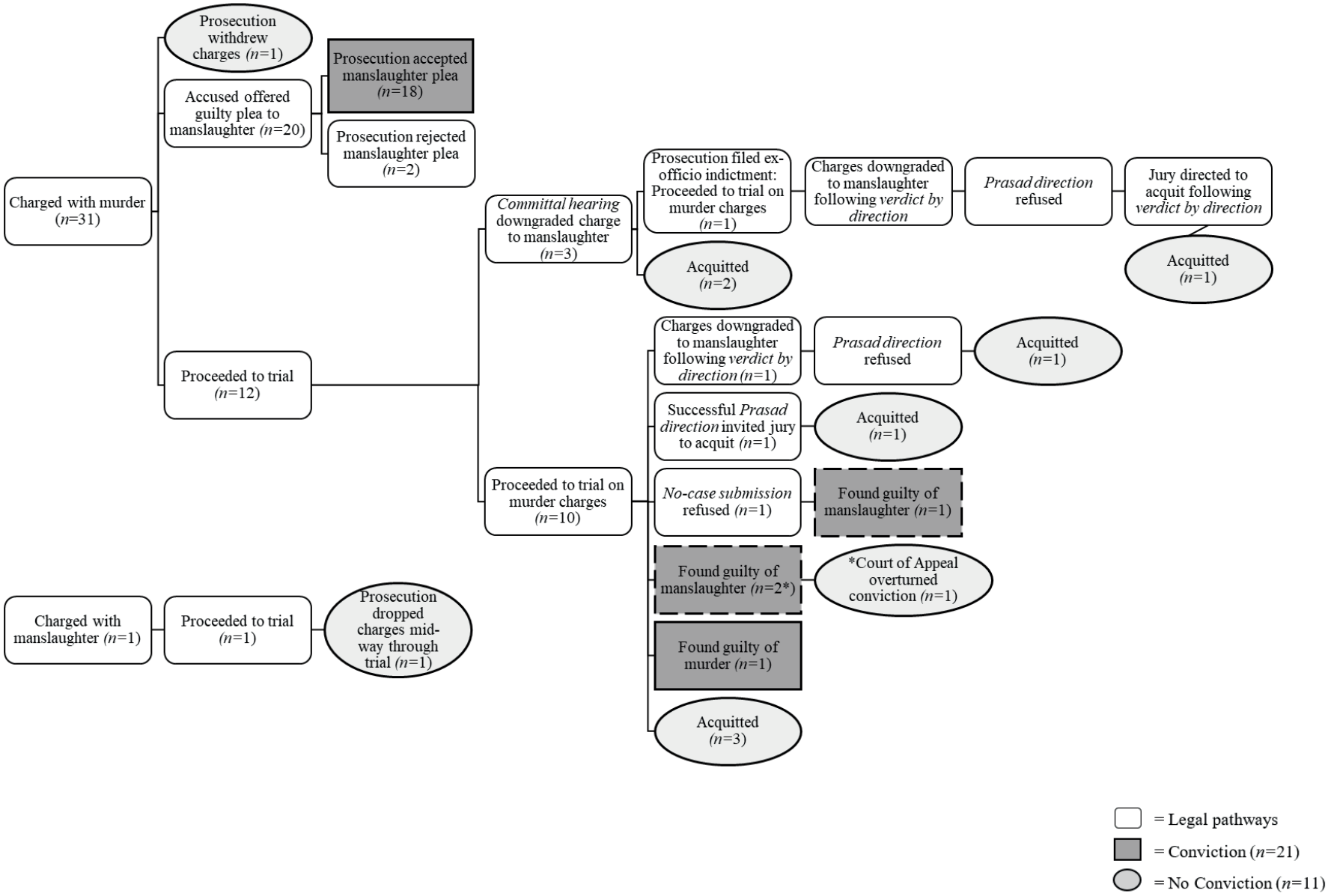

Figure 1. Legal pathways and outcomes for women charged with killing an abusive partner in "traditional" self-defence scenarios (*N*=32)

Various defences were employed as the basis of the manslaughter conviction. Of the 18 women who pleaded guilty, 67% (*n*=12) did so on the grounds that they lacked the *mens rea* for murder, meaning they did not have the required intention to kill their abusive partner. The remaining six (33%) utilised partial defences, including pleas to excessive self-defence (*n*=2), Victoria's defensive homicide (now repealed) (*n*=1), Queensland's killing for preservation (*n*=1), provocation (*n*=1), or substantial impairment (*n*=1). Of the two women who received manslaughter convictions at trial, one was found guilty due to a lack of intent, while the other was convicted of defensive homicide. Notably, at least four of the 18 women who pleaded guilty to manslaughter claimed their actions were in self-defence. However, by pleading guilty, they ultimately forfeited their right to a trial and the opportunity to receive an acquittal based on self-defence.

Jurisdictional Differences

There were some discernible differences in the legal outcomes by Australian jurisdiction. New South Wales had the highest proportion of acquittals (71%, *n*=5), while Victoria had the lowest, with only one (14%) of the seven women in Victoria receiving no conviction for their defensive actions (see Table 1). New South Wales also had the highest proportion of women proceeding to trial (71%, *n*=5), with all these women receiving no conviction for their actions. This was either by being found not guilty at the original trial or having their conviction overturned on appeal.

Table 1. Australian Jurisdiction by Legal Outcome and Method of Resolution

			Legal outcome			**Method of resolution**	
Jurisdiction	TOTAL (*N*=32)		Acquitted (*n*=11)	Convicted (*n*=21)		Guilty plea (*n*=18)	Trial (*n*=13)
	n (%)		*n* (%)	*n* (%)		*n* (%)	*n* (%)
New South Wales	7 (22)		5 (45.5)	2 (9.5)		2 (11)	5 (38.5)
Victoria	7 (22)		1 (9)	6 (29)		4 (22)	3 (23)
Western Australia	7 (22)		2 (18)	5 (24)		4 (22)	3 (23)
Queensland	7 (22)		2 (18)	5 (24)		5 (28)	2 (15)
South Australia	2 (6)			2 (9.5)		2 (11)	
Northern Territory	1 (3)			1 (5)		1 (6)	
Tasmania	1 (3)		1 (9)				

Legal Representation

The type of legal representation was known in 29 (91%) cases, with most (76%, *n*=22) of these women being privately represented, while seven (24%) were represented by legal aid. There were discernible differences in legal outcomes by the type of legal representation. Nearly all (91%, *n*=10) of the women who received no conviction were privately represented, contrasted with only one (9%) case where legal aid was involved. Conversely, nearly one third (29%, *n*=6) of the women who faced criminal convictions were represented by legal aid, while just over half (57%, *n*=12) had private representation. A higher percentage of women who proceeded to trial were also privately represented (85%, *n*=11), with legal aid representation appearing in only two (15%) trial cases. Nearly one third (30%, *n*=5) of the women who pleaded guilty were represented by legal aid, while just over half (56%, *n*=10) were privately represented.

Supporting Evidence of Domestic Abuse

Table 2 shows the type of evidence that could substantiate the women's history of domestic abuse. Most (71%, *n*=23) cases involved prior police involvement, with police being previously called to attend a domestic violence incident. Twenty-eight percent (*n*=9) of cases involved a prior charge or conviction against the male partner for domestic violence against the accused. Nearly one third (31%, *n*=10) involved a current or prior Domestic Violence Order (DVO) against the deceased. At least seven (22%) women had previously required medical treatment for their injuries, and over half (62.5%, *n*=20) had witnesses that substantiated their experience of prior violence. Table 2 shows that a slightly higher proportion of women who received a criminal conviction involved officially documented evidence of abuse through prior police involvement and medical treatment, compared to the acquitted group. This pattern was also reflected in women who pleaded guilty compared to those who proceeded to trial.

Table 2. Supporting Evidence of Domestic Abuse by Legal Outcome and Method of Resolution

			Legal outcome			Method of resolution	
Supporting evidence of abuse	TOTAL (*N*=32)		Acquitted (*n*=11)	Convicted (*n*=21)		Guilty plea (*n*=18)	Trial (*n*=13)
	n (%)		*n* (%)	*n* (%)		*n* (%)	*n* (%)
Prior police involvement							
Yes	23 (71)		7 (64)	16 (76)		15 (83)	7 (54)
No	8 (25)		4 (36)	4 (19)		2 (11)	6 (46)
Unknown	1 (3)			1 (5)		1 (6)	
Deceased charged/convicted							
Yes	9 (28)		2 (18)	7 (33)		7 (39)	2 (15)
No	19 (59)		8 (73)	11 (52)		8 (44)	10 (77)
Unknown	4 (12.5)		1 (9)	3 (14)		3 (17)	1 (7)
DVO against deceased (prior or current)							
Yes	10 (31)		3 (27)	7 (33)		7 (39)	2 (15)
No	22 (69)		8 (73)	14 (67)		11 (61)	11 (85)
Prior medical treatment for abuse							
Yes	7 (22)		1 (9)	6 (29)		5 (28)	2 (15)
No	20 (62.5)		8 (73)	12 (57)		10 (56)	9 (69)
Unknown	5 (16)		2 (18)	3 (14)		3 (17)	2 (15)
Witnesses substantiated abuse							
Yes	20 (62.5)		7 (64)	13 (62)		10 (56)	10 (77)
No	5 (16)		4 (36)	1 (5)		1 (6)	3 (23)
Unknown	7 (22)			7 (33)		7 (39)	

Circumstances of the Offence

Table 3 shows the immediate circumstances of the offence. The majority (72%, *n*=23) of women stabbed the deceased once or twice, rather than multiple times (12.5%, *n*=4), or assaulted them with another weapon (6%, *n*=2). Most (72%, *n*=23) cases involved substance use at the time of the offence by either the deceased, accused, or both. In 66% of cases (*n*=21), evidence was found to have supported, rather than contradicted, the accused's account of what occurred. Nearly all (87.5%, *n*=28) the women immediately sought help following the offence, while most (75%, *n*=24) did not lie or attempt to cover up the offence. In four (12.5%) cases, other persons were also attacked and/or threatened by the deceased during the offence. Table 3 illustrates that a higher proportion of women who received no conviction tended to have evidence that supported their version of events (82% vs. 57%) and to involve others being attacked and/or threatened (27% vs. 5%), compared to those who were convicted. Conversely, a higher proportion of convicted women lied or attempted to cover up the offence, compared to those who were acquitted (29% vs. 18%). For women who pleaded guilty, a higher proportion involved substance use at the time of the offence (78% vs. 61.5%) and to have immediately sought help (94% vs. 77%), compared to those who proceeded to trial. Women who proceeded to trial were more likely to involve others being attacked or threatened at the time of offence, compared to those who pleaded guilty (23% vs. 6%).

Table 3. Circumstances of Offence by Legal Outcome and Method of Resolution

			Legal outcome			Method of resolution	
Circumstances of offence	TOTAL (*N*=32) *n* (%)		Acquitted (*n*=11) *n* (%)	Convicted (*n*=21) *n* (%)		Guilty plea (*n*=18) *n* (%)	Trial (*n*=13) *n* (%)
Method of killing							
Stabbed once or twice	23 (72)		6 (64)	14 (76)		13 (83)	7 (54)
Stabbed multiple times	4 (12.5)		1 (9)	3 (14)		1 (6)	3 (23)
Assaulted with weapon	2 (6)		2 (18)				2 (15)
Shot with gun	2 (6)		1 (9)	1 (5)		1 (6)	1 (8)
Hit with car	1 (3)			1 (5)		1 (6)	
Substance use							
Yes	23 (72)		7 (64)	16 (76)		14 (78)	8 (61.5)
No	9 (28)		4 (36)	5 (24)		4 (22)	5 (38.5)
Evidence supported accused's account							
Yes	21 (66)		9 (82)	12 (57)		11 (61)	9 (69)
No	5 (16)		1 (9)	4 (19)		2 (11)	3 (23)
Unknown	6 (19)		1 (9)	5 (24)		5 (28)	1 (8)
Immediately sought help							
Yes	28 (87.5)		9 (82)	19 (90.5)		17 (94)	10 (77)
No	4 (12.5)		2 (18)	2 (9.5)		1 (6)	3 (23)
Lied/covered up offence							
Yes	8 (25)		2 (18)	6 (29)		5 (28)	3 (23)
No	24 (75)		9 (82)	15 (71)		13 (72)	10 (77)
Others attacked/threatened							
Yes	4 (12.5)		3 (27)	1 (5)		1 (6)	3 (23)
No	28 (87.5)		8 (72)	20 (95)		17 (94)	10 (77)

Relationship Characteristics

Table 4 shows the relationship characteristics between the female accused and male deceased. Approximately three-quarters (75%, *n*=24) of the sample were in a de facto relationship, which was consistent across both the acquitted and convicted groups. Notably, most (81%, *n*=17) of the convicted group were in a current relationship at the time of the offence, whereas just under half (45.5%, *n*=5) of the acquitted group were in the process of separating from their partner. Among women who pleaded guilty, a higher proportion were in a current relationship with the deceased, compared to those who proceeded to trial (83% vs. 61.5%). A higher proportion of women who proceeded to trial were separating from the deceased, compared to women who pleaded guilty (31% vs. 6%). Women who pleaded guilty also tended to have slightly shorter lengths of relationship, with an average of 6.5 years, compared to 9 years for the women who opted for trial (see Table 4).

Table 4. Relationship Characteristics by Legal Outcome and Method of Resolution

			Legal outcome			Method of resolution	
Relationship characteristics	TOTAL (*N*=32)		Acquitted (*n*=11)	Convicted (*n*=21)		Guilty plea (*n*=18)	Trial (*n*=13)
	n (%)		*n* (%)	*n* (%)		*n* (%)	*n* (%)
Age of accused							
Range	18–59		18–59	18–50		18–50	18–59
Mean (SD)	35 (10.84)		34 (3.70)	34 (2.47)		33 (2.86)	36 (2.97)
Age of deceased							
Range	18–65		19–63	18–65		18–57	19–65
Mean (SD)	36 (12.42)		36 (4.23)	37 (2.77)		34 (2.49)	41 (3.98)
Relationship Type							
Husband	5 (16)		2 (18)	3 (14)		3 (17)	2 (15)
Engaged	2 (6)		1 (9)	1 (5)		1 (6)	1 (8)
De facto	24 (75)		8 (73)	16 (76)		14 (78)	9 (70)
Sexual	1 (3)			1 (5)			1 (8)
Relationship status							
Current	23 (72)		6 (54.5)	17 (81)		15 (83)	8 (61.5)
Prior	3 (9)			3 (14)		2 (11)	1 (8)
Separating	6 (19)		5 (45.5)	1 (5)		1 (6)	4 (31)
Relationship length (yrs.)							
Range	0.25–27		0.83–25	0.25–27		0.83–27	0.25–25
Mean (SD)	8 (8.5)		7 (2.9)	9 (2.0)		6.5 (2.3)	9 (2.8)

Accused Characteristics

Table 5 shows the characteristics of the accused by the legal outcome and method of resolution. Strikingly, none of the Indigenous Australians in this sample were acquitted for their actions. Indigenous women were also more likely to plead guilty rather than go to trial (44% vs. 15%). Based upon the information available, a higher proportion of women who received a criminal conviction had a previous criminal history (52% vs. 9%) and had previously fought back against the deceased (48% vs. 36%), compared to the women who were acquitted. Conversely, nearly half (45.5%, *n*=5) of the women who were acquitted had previously attempted to leave the relationship, compared to about a third (29%, *n*=6) of the women who received a criminal conviction. Women who pleaded guilty also appeared more likely to have a prior criminal conviction (56% vs. 8%) and to have previously fought back against the deceased (56% vs. 23%), compared to those who proceeded to trial. On all other factors, the two groups appeared very similar.

Table 5. Accused Characteristics by Legal Outcome and Method of Resolution

			Legal outcome			Method of resolution	
Accused characteristics	TOTAL (*N*=32)		Acquitted (*n*=11)	Convicted (*n*=21)		Guilty plea (*n*=18)	Trial (*n*=13)
	n (%)		*n* (%)	*n* (%)		*n* (%)	*n* (%)
Indigenous Australian							
Yes	10 (31)			10 (48)		8 (44)	2 (15)
No	22 (69)		11 (100)	11 (52)		10 (56)	11 (85)
Other cultural background/born overseas							
Yes	4 (12.5)		2 (18)	2 (10)		2 (12)	2 (15)
No	28 (87.5)		9 (82)	19 (90)		15 (88)	11 (85)
Prior criminal conviction							
Yes	12 (37.5)		1 (9)	11 (52)		10 (56)	1 (8)
No	11 (34)		6 (54.5)	5 (24)		3 (17)	8 (61.5)
Unknown	9 (28)		4 (36)	5 (24)		5 (28)	4 (31)
Previously fought back							
Yes	14 (44)		4 (36)	10 (48)		10 (56)	3 (23)
No	8 (25)		4 (36)	4 (19)		1 (6)	7 (54)
Unknown	10 (31)		3 (27)	7 (33)		7 (39)	3 (23)
Childcare responsibilities							
Yes	21 (66)		8 (73)	13 (62)		10 (56)	10 (77)
No	8 (25)		2 (18)	6 (29)		6 (33)	2 (15)
Unknown	3 (9)		1 (9)	2 (9.5)		2 (11)	1 (8)
Sought assistance for abuse							
Yes	5 (16)		2 (18)	3 (14)		2 (11)	3 (23)
No	19 (59)		7 (64)	12 (57)		10 (56)	8 (61.5)
Unknown	8 (25)		2 (18)	6 (29)		6 (33)	2 (15)
Attempted to leave							
Yes	11 (34)		5 (45.5)	6 (29)		5 (28)	5 (38.5)
No	15 (47)		4 (36)	11 (52)		9 (50)	6 (46)
Unknown	6 (19)		2 (18)	4 (19)		4 (22)	2 (15)

Discussion

This study explored the legal pathways amongst women who killed their abusive partner in "traditional" self-defence scenarios. It provides crucial insights into the "evidentiary checkpoints" and case characteristics that can support successful acquittals or the withdrawal of murder charges. The salient factors associated with acquittals or convictions amongst these cases were identified. Thus, the findings can contribute to a better understanding of the factors facilitating or hindering successful self-defence claims for women. Our research findings were limited by the small sample size and instances of missing data. However, the study is worthwhile to raise the discussion points that could serve to assist abused women who kill their intimate partners in self-defence. Given most criminal convictions result from guilty pleas, the findings can also help women and legal practitioners make informed choices when considering their options of proceeding to trial or potentially pleading guilty to lesser charges.

Partial Defences as a Fallback Option

New South Wales had more cases proceed to trial than any other state and had the largest number of cases that received no convictions. All women proceeding to trial in this state were acquitted for their defensive actions. Notably, New South Wales is the state that has retained several partial defences to homicide that would directly apply to these candidates, including excessive self-defence, provocation, and substantial impairment. In other words, the jurisdiction with the most retained partial defences also had the highest percentage of women proceeding to trial and the highest rates of acquittals. In contrast, Victoria, a state without partial defences, recorded the highest rate of guilty pleas and criminal convictions, compared to other jurisdictions. This may support concerns that abolishing partial defences removes the "safety net" or fallback option for women who kill in response to abuse, thereby putting increased pressure on women to plead guilty to manslaughter to avoid a murder conviction at trial (McKenzie et al. 2014; Tyson et al. 2015: 87-88). Although partial defences are often criticised for undermining self-defence claims (Fitz-Gibbon and Stubbs 2012), their continued availability may be crucial to give women the confidence to pursue self-defence claims at trial. In this context, women can proceed to trial knowing that an alternative to a murder conviction is available, should the complete defence fail.

Charge with Manslaughter, Not Murder

The findings provide further evidence of prosecutorial overcharging practices, since nearly all of the women were initially charged with murder. Most who proceeded to trial were either able to have their charges downgraded to manslaughter and/or received a full acquittal for their actions. This illustrates the prosecution's determination to proceed to trial on murder charges, despite weak evidential bases to sustain murder convictions (see Figure 1). This is illustrated in the case of Jonda Stephen. Following the committal hearing, the magistrate downgraded her murder charge to manslaughter, finding that there was insufficient evidence to prove the mental element for murder (Donnellan 2019). However, the Director of Public Prosecutions overruled this decision and filed an *ex officio indictment* for murder, alleging that Jonda had killed with an intention to do grievous bodily harm (Tarrant 2023). During the trial, the defence filed applications for an acquittal by *verdict by directions* (*R v Stephen (No. 3) (2018)*) and *Prasad directions* (*R v Stephen (No. 5) (2018)*). The prosecution ultimately conceded that they could not prove either the murder or manslaughter charge (*R v Stephen (No. 6) (2018)*). Jonda Stephen was ultimately acquitted for her defensive actions.

As Figure 1 illustrates, when we tracked these cases as they proceeded through their respective legal pathways, we found that, on the whole, the prosecution demonstrated powers to overcharge *and* powers to deny plea negotiations. For example, at least two women attempted to plead guilty to manslaughter, with these offers refused by the prosecution. Both women, therefore, proceeded to trial on murder charges, and both were found guilty of manslaughter (*DPP v Kerr (2014)*; *DPP v Williams (2014)*). Had the prosecution been willing to accept their guilty pleas to manslaughter, both women could have avoided the cost and stress of a trial. Overall, the vast majority of cases were either downgraded to manslaughter, acquitted, or resulted in no conviction, at some point along their legal pathways. This suggests that Australia's strict charging and prosecutorial practices and minimal use of partial defences do not adequately meet the needs of, or provide justice for, abused women. To improve the outcomes for these women, particularly those who kill in response to a violent confrontation and face an immediate threat of harm, we urge prosecutorial charging practices to consider manslaughter charges, rather than murder, at the outset and pretrial stages.

Going To Trial: Identifying Evidentiary Checkpoints as Turning Points

Although all cases involved a physical confrontation, thereby aligning with "traditional" requirements for self-defence by involving an immediate threat of harm, most convictions resulted from female defendants accepting guilty pleas for manslaughter in exchange for the prosecution withdrawing the murder charges. This strategy ensures women receive a reduced charge of manslaughter, thereby avoiding the risk of a murder conviction and lengthy prison sentences. However, it does not offer an easy recourse to appeal this decision once in place (Nash et al. 2023; Stubbs and Tolmie 2008). It also, by virtue of the plea, removes the possibility of an outright acquittal.

In contrast, nearly all the cases that proceeded to trial ended in no conviction in the final stage. When tracked on a timeline, going to trial appears to provide additional systemic checkpoints where evidence is repeatedly proffered, considered, and reviewed by different decisionmakers encountered on its path. These checkpoints can serve as turning points in a case. Each decisionmaker has the discretion to alter the course of the case by downgrading charges, withdrawing charges, or directing the jury on a full acquittal (see Figure 1). This can occur during the committal hearing, where a magistrate evaluates the prosecution's case to determine if it holds sufficient evidence to substantiate the charges. Alternatively, the defence can make *verdict by direction* or *no-case* submissions during the trial, in which they can directly challenge whether the state has the sufficient evidence required to sustain a murder or manslaughter conviction (Tarrant 2023). Three cases in our study applied

for a *Prasad direction*, where the judge can inform the jury of their right to return a not guilty verdict at any time following the close of the prosecution case (*R v Castaneda (2015); R v Dunlop (2016); R v Stephen (No. 5) (2018)*). This direction has since been abolished after the Australian High Court found it to be contrary to law (*DPP Reference No. 1 of 2017 (2019)*). Overall, these "evidentiary checkpoints" afford defendants more time and opportunity to provide a social context for the circumstances of the offence in light of the continued abuse the defendants experienced in the relationship. This enables decisionmakers to acknowledge and address the effects of social entrapment (Douglas et al. 2020) experienced by these women amid their sustained abusive relationships. They can also gain a better understanding of why lethal force was reasonable and necessary under the circumstances. In this way, the murder charge is consistently flagged, offering repeated opportunities for downgrading or withdrawing these charges at any point, or securing a full acquittal.

The case of Jonda Stephen, described above, provides a clear illustration of the various checkpoints where these legal strategies can be applied to support a successful acquittal. Charges were reviewed and downgraded through the committal hearing and verdict by direction and *Prasad directions* were applied at various points (see Figure 1). In other cases, we have seen that the prosecution has the authority to withdraw the charges against the accused during any stage of the legal process. For instance, in the case of Tracey Bridgewater, the prosecution withdrew charges midway through her manslaughter trial after conceding there was no reasonable prospect of securing a conviction (Menagh 2021). Notably, this concession occurred during the accused's second manslaughter trial, as her first trial had resulted in a hung jury. The prosecutorial concessions in cases like Stephen and Bridgewater represent fortunate outcomes that resulted in their acquittals. However, this raises questions about the prosecution's determination to proceed to trial, despite eventually recognising the lack of sufficient evidence to prove either murder or manslaughter charges.

It is ultimately the decision of the defendant to pursue trial or to plead guilty. These decisions are often claimed by defence counsel to be made of the defendant's free will, despite strong pressures that suggest otherwise (Nash et al. 2024). Evidentiary checkpoints may be required to serve as turning points in cases, so that charges can be reconsidered to prevent overcharging practices. As seen in the sample, there is a greater chance of a charge being downgraded or reaching an acquittal through the trial pathway than there is if one pleads guilty at the outset. In light of these findings, we recommend that legal counsel is clear with their clients as to the drawbacks and potential benefits of going to trial and of the multiple "evidentiary checks" built into the system that create opportunities to plead their cases to different decisionmakers.

Potential Checklist of Factors in Acquittal Cases

The salient factors in the no conviction group of the sample offer insight into what might constitute the "ideal candidate" for a successful self-defence case for women who kill their abusive partners. However, caution should be exercised in interpreting these findings due to the study's small sample size. Common factors in successful acquittals included evidence supporting the woman's account of the event and the deceased attacking or threatening others at the time of the killing. This highlights the credibility challenges women can often face in the justice system. Women separating from their partners or those who had previously attempted to leave the relationship were also viewed more favourably than those in ongoing abusive relationships or those who had never attempted to leave. Other contributing factors to the "ideal candidate" profile included being non-Indigenous, having no prior criminal record, and not fighting back during violent confrontations. This aligns with the concept of the "ideal victim" or "benchmark battered woman" identified in prior literature, where self-defence is limited only to those who adhered to societal gender roles. These are characterised by submissiveness, good mothers and caregivers, and passive non-responders to violence (Delgado-Alvarez and Sanchez-Prada 2022; Douglas 2012). Conversely, cases resulting in convictions and guilty pleas had a higher proportion of women with documented histories of abuse. This illustrates how past abuse can be leveraged by prosecutors and juries to imply and infer that the act was retaliatory or out of anger, rather than an act of self-defence (Douglas et al. 2020).

Considering these salient factors collectively, legal representation can use them to inform the advice given to clients, particularly in cases involving an immediate confrontation. These factors provide additional context to the events surrounding the offence and the relationship—aspects that might not be systemically considered otherwise. This further underscores the complexity of strategic decisions made by women and their legal counsel regarding whether to proceed to trial or plead guilty.

Preference for Private Legal Counsel

We found there was more success at trial when engaging in private legal counsel, compared to using legal aid. This is not a surprising point, given the high workloads for legal aid lawyers that may inadvertently encourage guilty pleas, rather than trials, and the limited resources to support a murder trial. On the whole, women prosecuted for killing in the context of domestic abuse would benefit from private legal counsel, when possible.

Treatment of Indigenous Women

Indigenous women face significant disadvantages across every aspect of the legal process and their Indigeneity was found to be a risk factor for conviction. They pleaded guilty more often than non-Indigenous women, rarely proceeded to trial, and, when they did, they were convicted. In our sample, Indigenous women were convicted 100% of the time.

Indigenous women can be under increased pressures to plead guilty. This can stem from fear and distrust of the legal system, greater difficulties in accessing legal advice in rural or remote areas, communication difficulties due to linguistic and language differences, and greater levels of trauma, risk, and difficulties in going to trial than their non-Indigenous counterparts (Stubbs and Tolmie 2008). Persistent stereotypes of what constitutes a "benchmark battered woman" can also create additional hurdles for Indigenous women (Douglas 2012). These women are more likely to have a criminal history, experience problems with alcohol or substance abuse, and use violence in retaliation (Douglas 2012; Stubbs and Tolmie 2008). Indeed, when delving into the factors influencing convictions, it becomes apparent that these secondary elements, more prevalent among Indigenous women than their non-Indigenous counterparts, can play a significant role. This observation aligns with existing literature, which highlights the impact of gendered stereotypes and racial biases on the experiences of Indigenous women. Instead of being viewed in a nuanced manner, Indigenous women are often subjected to negative racial stereotyping, labelled as "mad" or "bad" due to factors such as criminal history, substance use, and fighting back in acts of self-defence (Cripps 2024; Stubbs and Tolmie 2008; Weare 2013). This can serve as an additional barrier to trial and may play a role in why these women tend to plead guilty.

Given that all of the Indigenous women in the sample were convicted, further investigation is necessary to gain a deeper understanding of the intersectionality experienced by Indigenous women. Their experiences differ significantly from those of both their non-Indigenous female counterparts and their Indigenous male counterparts. Additionally, caution should be exercised when advising and accepting guilty pleas in these cases. Unfortunately, the same caution applies when recommending and considering going to trial. As a case in point, the only murder conviction in the sample involved an Indigenous defendant, Jody Gore (*The State of Western Australia v Gore (2016)*). Despite being subjected to substantial violence over two decades, and stabbing her partner following a physical assault in which she believed he was going to hit her with a rock, the jury rejected her claim that she acted in self-defence. Instead, the court found that Gore, who was intoxicated at the time of the offence, acted out of anger in response to the deceased taking money from her (*The State of Western Australia v Gore (2016)*: para 44). However, following evidence of domestic abuse that was not presented at her trial, the Western Australian government invoked the rarely used "mercy" law to free Gore from prison after serving four years of her 12-year sentence (McGlade and Tarrant, 2021). This case demonstrates the additional barriers Indigenous women can face in having their self-defensive actions viewed as reasonable. It also highlights the predominant use of mercy provisions rather than exoneration amongst women who kill an abusive partner (Webster and Miller 2014), with Gore still holding a criminal conviction for murder. As argued by Stubbs and Tolmie (2005: 191), "mercy too often substitutes for an acquittal".

Indigenous women would ultimately benefit from private legal counsel and more resources. Greater attention and understanding by legal practitioners and judges as to the ways in which these women can experience domestice violence as well as the structural inequalities they face, would also be beneficial. These factors curtail their autonomy and agency within the abusive relationship, especially when their experiences may deviate from the traditional "benchmark battered woman" and may be viewed by the courts unfavourably (McGlade and Tarrant 2021).

Conclusion

The aim of this study was to investigate the outcomes for women who have the best chance of a possible acquittal for killing their abusive partners in self-defence and to identify factors influencing subsequent acquittals or convictions. By systematically tracking and analysing these cases throughout their life course, we pinpointed pivotal moments that can alter the trajectory from a conviction to an acquittal, offering informed pragmatic strategies for success. Though proceeding to trial carries a heightened risk of a murder conviction and lengthy prison sentences, the study identified "evidentiary checkpoints" where evidence can be thoroughly evaluated. Opportunities to leverage the discretionary powers of prosecutors and judges which could potentially lead to reduced charges or outright acquittals were also noted. Strategically navigating these checkpoints could also be optimised by considering the salient factors associated with acquittals. This could inform decisions on whether to proceed to trial or negotiate a plea for lesser charges.

Encouraging more women to go to trial, as opposed to accepting guilty pleas, serves a dual purpose. It tests the adequacy of existing case law by probing the evidential threshold for a successful self-defence claim. Additionally, it provides an opportunity for a nuanced understanding of women's experiences of violence to be articulated in court. This approach fosters

a critical examination of the justice system's responsiveness to the unique challenges faced by women in abusive relationships. However, it is imperative to acknowledge the sobering reality: the experiences of Indigenous women demand heightened attention and research at all stages, from pretrial to trial phases. Regardless of the chosen legal pathway, Indigenous women in Australia appear disproportionately disadvantaged toward convictions. This underscores the need for ongoing, comprehensive attention and research into understanding the systemic challenges they confront within the legal system and strategies to address the violence they endure.

Correspondence: Dr Rachel Dioso-Villa, Senior Lecturer, Griffith Criminology Institute and School of Criminology and Criminal Justice, Griffith University, Australia. r.diosovilla@griffith.edu.au

References

Bradfield R (2002) Understanding the battered woman who kills her violent partner—the admissibility of expert evidence of domestic violence in Australia. *Psychiatry, Psychology and Law* 9(2): 177–199. https://psycnet.apa.org/doi/10.1375/13218710260612064.

Braun K (2017) "Till death us do part": Homicide defenses for women in abusive relationships—similar problems—different responses in Germany and Australia. *Violence Against Women* 23(10): 1177–1204. https://doi.org/10.1177/1077801216656832.

Butler DM (2016) Holding back the'battered woman': Western Australia v Liyanage. *University of Western Australia Law Review* 41(1): 321–341.

Centre for Women's Justice (2021) *Women who kill: How the state criminalises women we might otherwise be burying.* https://www.centreforwomensjustice.org.uk/news/2021/2/13/women-who-kill-how-the-state-criminalises-women-we-might-otherwise-be-burying.

Cripps K (2024) Sentencing Aboriginal women who have killed their partners: Do we really hear them? In Douglas H, Goodmark L and Walklate S (eds) *The criminalization of violence against women*: 115–131. Oxford: Oxford University Press.

Crofts T and Tyson D (2013) Homicide law reform in Australia: Improving access to defences for women who kill their abusers. *Monash University Law Review* 39(3): 864–893.

Cullen P, Vaughan G, Li Z, Price J, Yu D and Sullivan E (2019) Counting dead women in Australia: An in-depth case review of femicide. *Journal of Family Violence* 34(1): 1–8. https://doi.org/10.1007/s10896-018-9963-6.

Delgado-Alvarez C and Sanchez-Prada A (2021) Stereotypes about battered women and victim's self-defense: Legal implications. *Journal of Interpersonal Violence* 37(21–22): https://doi.org/10.1177/08862605211055154.

Australian Domestic and Family Violence Death Review Network (2018) Australian domestic and family violence death review network: 2018 data report.

Donnellan A (2019) How the justice system turned a domestic violence victim into an accused murderer. *ABC News*, 24 October. https://www.abc.net.au/news/2019-10-24/jonda-stephen-domestic-violence-abuse-victim-accused-of-murder/11590058.

Douglas H, McGlade H, Tarrant S and Tolmie J (2020). Facts seen and unseen: Improving justice responses by using a social entrapment lens for cases involving abused women (as offenders or victims). *Current Issues in Criminal Justice* 32(4): 488–506. https://doi.org.10.1080/10345329.2020.1829779

Douglas H (2012) A consideration of the merits of specialised homicide offences and defences for battered women. *Australian & New Zealand Journal of Criminology* 45(3): 367–382. https://doi.org/10.1177/0004865812456851.

Edwards SSM (2023) Legally male: The householder defence, duress and the continuing exclusion of women. In McPherson RM (ed.) *Women who kill, criminal law and domestic abuse*: 95–111. Milton: Taylor & Francis Group.

Edwards SSM and Koshan J (2023) Women who kill abusive men: The limitations of loss of control, provocation and self-defence in England and Wales and Canada. *The Journal of Criminal Law* 87(2): 75–96. https://doi.org/10.1177/00220183231165719.

Fitz-Gibbon K (2022) Gender, criminal law and violence against women: Mapping the limits of legal interventions and approaches to reform. In Gibbs A and Gilmour F (eds) *Women, crime, and justice in context: Contemporary perspectives in feminist criminology from Australia and New Zealand*: 44–56. Milton: Taylor & Francis Group.

Fitz-Gibbon K and Stubbs J (2012) Divergent directions in reforming legal responses to lethal violence. *Australian and New Zealand Journal of Criminology* 45(3): 318–336. https://doi.org/10.1177/0004865812456853.

Fitz-Gibbon K and Vannier M (2017) Domestic violence and the gendered law of self-defence in France: The case of Jacqueline Sauvage. *Feminist Legal Studies* 25: 313–335. https://doi.org/10.1007/s10691-017-9358-8.

Goodmark L (2008) When is a battered woman not a battered woman? When she fights back. *Yale Journal of Law and Feminism* 20(1): 75–130.

Hopkins A, Carline A and Easteal P (2017) Equal consideration and informed imagining: Recognising and responding to the lived experiences of abused women who kill. *Melbourne University Law Review* 41(3): 1201–1236.

Hopkins A and Easteal P (2010) Walking in her shoes: Battered women who kill in Victoria, Western Australia and Queensland. *Alternative Law Journal* 35(3): 132–137. https://doi.org/10.1177/1037969X1003500301.

Howes SK, Williams KS and Wistrich H (2021) Women who kill: Why self-defence rarely works for women who kill their abuser. *The Criminal Law Review* 11: 945–957.

Kirkwood D, Mckenzie M and Tyson D (2013) *Justice or judgement?: The impact of Victorian homicide law reforms on responses to women who kill intimate partners*. Domestic Violence Resource Centre.

Koshan J (2023) Challenging myths and stereotypes in domestic violence cases. *Canadian Journal of Family Law* 35(1): 33–81.

McGlade H and Tarrant S (2021) "Say her name": Naming Aboriginal women in the justice system. In Perera S and Pugilese J (eds) *Mapping deathscapes: Digital geographies of racial and border violence*: 106–126. Milton: Taylor & Francis Group.
Mckenzie M, Kirkwood D and Tyson D (2014) Throwing away a safety net. *DVRCV Advocate* 2(2): 14–19.
McPherson RM (2022) Women and self-defence: An empirical and doctrinal analysis. *International Journal of Law in Context* 18: 461–475. https://doi.org/10.1017/S1744552322000131.
Menagh J (2021) Tracey Bridgewater walks free as manslaughter charge over fatal stabbing dropped during retrial. *ABC News*, 19 February. https://www.abc.net.au/news/2021-02-19/tracey-bridgewater-fatal-stabbing-manslaughter-charge-dropped/13173486
Nash C and Dioso-Villa R (2023) Australia's divergent legal responses to women who kill their abusive partners. *Violence Against Women* 30(9). https://doi.org/10.1177/10778012231156154.
Nash C, Dioso-Villa R and Porter L (2023) Identifying a "miscarriage of justice": Factors influencing a successful appeal against a guilty plea conviction in Australia. *Criminal Justice Policy Review* 34(4): 361–386. https://doi.org/10.1177/08874034231162776
Nash C, Dioso-Villa R and Porter L (2024) Efficiency over accuracy?: Exploring front-line practitioners' experiences and opinions on the "guilty plea system". *Social & Legal Studies* 33(3): 420–442. https://doi.org/10.1177/09646639231197778.
Naylor B and Tyson D (2017) Reforming defences to homicide in Victoria: Another attempt to address the gender question. *International Journal for Crime, Justice and Social Democracy* 6(3): 72–87. https://doi.org/10.5204/ijcjsd.v6i3.414.
Schneider EM (2008) *Battered women and feminist lawmaking.* Harrisonburg, VA: Yale University Press.
Select Committee on the Partial Defence of Provocation (2013) *The partial defence of provocation: Final Report.* New South Wales Legislative Council. https://www.parliament.nsw.gov.au/lcdocs/inquiries/2007/Partial%20defence%20of%20provocation_Final%20report.pdf.
Sheehy E (2014) *Defending battered women on trial: Lessons from the transcripts.* Vancouver, BC: UBC Press.
Sheehy E, Stubbs J and Tolmie J (2012) Battered women charged with homicide in Australia, Canada and New Zealand: How do they fare? *Australian & New Zealand Journal of Criminology* 45(3): 383–399. https://doi.org/10.1177/0004865812456855.
Stöckl H, Devries K, Rotstein A, Abrahams N, Campbell J, Watts C and Moreno CG (2013) The global prevalence of intimate partner homicide: A systematic review. *The Lancet* 382(9895): 7–13. https://doi.org/10.1016/S0140-6736(13)61030-2.
Stubbs J and Tolmie J (1999) Falling short of the challenge? A comparative assessment of the Australian use of expert evidence on the battered woman syndrome. *Melbourne University Law Review* 23(3): 709–748.
Stubbs J and Tolmie J (2005) Defending battered women on charges of homicide: The structural and systemic versus the personal and particular. In Chan W, Chunn DE and Menzies R (eds) *Women, madness and the law.* London: GlassHouse.
Stubbs J and Tolmie J (2008) Battered women charged with homicide: Advancing the interests of indigenous women. *Australian & New Zealand Journal of Criminology* 41(1): 138–161. https://doi.org/10.1375/acri.41.1.138.
Tarrant S (2021) Why intimate partner violence is difficult to see as grounds for self-defence: Old common law legacies. *New Zealand Universities Law Review* 29(4): 703–741.
Tarrant S (2023) Making no-case submissions in self-defence claims for primary victims of intimate partner violence charged with criminal offending. *Current Issues in Criminal Justice* 35(1): 48–64. https://doi.org/10.1080/10345329.2022.2109247.
Tarrant S, Tolmie J and Giudice G (2019) *Transforming legal understandings of intimate partner violence*. Sydney, NSW: ANROWS.
Tolmie J, Smith R, Short J, Wilson D and Sach J (2018) Social entrapment: Realistic understanding of the criminal offending of primary victims of intimate partner violence. *New Zealand Law Review* 2(2): 181–217.
Tyson D, Kirkwood D and Mckenzie M (2017) Family violence in domestic homicides: A case study of women who killed intimate partners post-legislative reform in Victoria, Australia. *Violence Against Women* 23(5): 559–583. https://doi.org/10.1177/1077801216647796.
Tyson D, Kirkwood D, McKenzie M and Naylor B (2015) The effects of the 2005 reforms on legal responses to women who kill intimate partners. In Fitz-Gibbon K and Freiberg A (eds) *Homicide law reform in Victoria: Retrospect and prospects*: 76–93. Leichardt, Victoria: The Federation Press.
Victorian Law Reform Commission (2004) *Defences to homicide: Final report*. https://www.lawreform.vic.gov.au/wp-content/uploads/2021/07/VLRC_Defences_to_Homicide_Final_Report.pdf.
Weare S (2013) "The mad," "the bad," "the victim": Gendered constructions of women who kill within the criminal justice system. *Laws* 2(3): 337–361. https://doi.org/10.3390/laws2030337.
Webster E and Miller J (2014) Gendering and racing wrongful conviction: Intersectionality, normal crimes, and women's experiences of miscarriage of justice. *Albany Law Review* 78(3): 973–1034.

Cases Cited

DPP v Kerr (2014) VSC 374
DPP Reference No. 1 of 2017 (2019) HCA 9
DPP v Williams (2014) VSC 304 (27 June 2014)
R v Castaneda (Unreported, Supreme Court of New South Wales, Wilson J, 18 July 2015)
R v Dunlop (Unreported, Supreme Court of Victoria, Lasry J, 24 November 2016)
R v Stephen (No. 3) (2018) NSWSC 168
R v Stephen (No. 5) (2018) NSWSC 170
R v Stephen (No. 6) (2018) NSWSC 243
The State of Western Australia v Gore (2016) WASCSR 229