

THE BATTERED BODY

A Feminist Legal History

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CERTIFICATE

I certify that this thesis has not already been submitted for any degree and is not being submitted as part of candidature for any other degree.

I also certify that the thesis has been written by me and that any help that I have received in preparing the thesis, and all sources used, have been acknowledged in this thesis.

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ABSTRACT

This thesis investigates a current debate within feminist theory, and specifically within feminist legal theory, about how to challenge the liberal construction of women's subjectivity. It contends that positioning women as either equal to or different from the universalised liberal subject (based on male experience) fails to recognise women's experience as diverse, and differentiated. This thesis explores this issue through the empirical area of the treatment in the public sphere (constituted by the state and the law) of domestic violence, and of domestic violence survivors who kill their abusive spouses. It argues that the current feminist jurisprudential responses to the battered woman who kills, articulated through criticisms of the Battered Woman Syndrome, identify the need to challenge the binary oppositional framework in which these cases are decided and discussed by liberal legalism. However, it suggests that these responses do not ground their discussion in the historical preconditions which gave rise to the debate and the feminist framework in which that debate is conducted.

This thesis argues that an historical re-examination of the ways in which women's experience of domestic violence, as well as the law's reading of it, was constructed is an important contribution to feminist legal theory. It undertakes this historical re-examination by situating the Battered Woman Syndrome and domestic violence within the struggles and campaigns of feminism in the past, especially feminism as it developed through the Women's Liberation Movement of the 1970s. It argues that the understanding of women and women's experience as diversely constituted through this period is essential for an understanding of current debates.

This thesis represents an interdisciplinary feminist legal history. It uses both the method and evidence of history to challenge the legal understandings of battered women who kill. It posits that an interdisciplinary engagement between postmodern legal and historical theories, which contest objective assessments of subjects' experience, allows for a more complex and comprehensive assessment of how to approach, and critique, the Battered Woman Syndrome. It suggests that

this can be accomplished by applying the techniques of narrative developed in historical theory to feminist legal theory. It therefore posits that a postmodern methodological approach, realised through a genealogical investigation of the subjectivity of battered women, is of value in the current debate about how to deal with the paradox presented by feminism's engagement with liberalism, and evidenced through the law's assessment of the battered woman who kills.

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For Sarah Zetlein
(1971 – 1996)

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ABBREVIATIONS

ACTU	Australian Council of Trade Unions
AFWV	Australian Federation of Women Voters
ALP	Australian Labor Party
ALWG	Australian Legal Workers Group
AWNL	Australian Women's National League
BCL	British Commonwealth League
BWS	Battered Woman Syndrome
CLS	Critical Legal Studies
CPA	Communist Party of Australia
CWA	Country Women's Association
DSS	Department of Social Security
DVTF	Domestic Violence Task Force, NSW 1981
FLAG	Feminist Legal Action Group
FTYC	First Ten Years Collection
IWY	International Women's Year
NCVAW	National Committee on Violence Against Women, 1991
NCW	National Council of Women
NSW	New South Wales
PAG	Prisoner's Action Group
RL/WB	Robyn Lansdowne, Wendy Bacon: Private Papers
SANSW	State Archives of New South Wales
UAW	Union of Australian Women
WBB	Women Behind Bars
WCTU	Women's Christian Temperance Union
WEL	Women's Electoral Lobby
WLM	Women's Liberation Movement
WPA	Women's Political Association
WPEL	Women's Political Electoral League

PROLOGUE

...to rob [someone] of their language in the very name of language:
this is the first step in all legal murders.¹

R v Violet Mary Roberts, Bruce Maurice Roberts²

On December 13, 1975, Australia was going to the polls to make sense of the fracas that emanated from the dismissal of Labor Prime Minister, Gough Whitlam. In Pacific Palms, a tiny settlement not far from Forster on the New South Wales coast, a woman, Violet Roberts, went to the local school to vote. Her husband was with her. They had been travelling all day by bus from Sydney, where they had gone to collect the belongings of their son, David, who had died of leukemia. Eric Roberts had been drinking on this journey, consuming a flagon of wine. He continued to drink when they arrived home, and was visibly drunk when they went to the school to vote at about 5.30 pm.³ He was verbally abusive toward Violet at the polling booth, using offensive language that embarrassed her in front of her neighbours.⁴

The couple returned home, and Eric Roberts retired to the bedroom, undressed, and commenced to drink more wine from a flagon. Unusually, he fell asleep early. Violet waited until he was in a sound sleep, at about 9.30 pm, and left the house to have a conversation with her seventeen year old son Bruce, who lived in an old bus at the back of the Roberts' lot.⁵ She and Bruce talked for a while, had a glass of wine, and played cassettes.⁶ After about an hour, she told Bruce, 'I am going. I

¹ Roland Barthes (1993), 'Dominici or the Triumph of Literature', *Mythologies*, (first published 1972), (ed. and trans. A. Lavers), Jonathon Cape, London, pp. 43-46. p. 46

² *R v Violet Mary Roberts, Bruce Maurice Roberts*, unreported, Supreme Court of New South Wales, Newcastle, 15 March 1976.

³ *R v Roberts*, summing up, p. 26 (quoted from Violet Roberts' Record of Interview).

⁴ *ibid.*

⁵ *R v Roberts*, summing up, p. 19 (quoted from Violet Roberts' unsworn statement).

⁶ *ibid.*

suppose I had better go on over',⁷ and returned to the house. She went to the bedroom to put on her nightgown in order to go to bed, and noticed that Eric 'appeared to be dead.'⁸ Confused as to what had happened, Violet returned to Bruce, who was still in the bus. She was afraid that Bruce was going to get into trouble, get the blame, because she could not remember killing Eric. She tried to think of a story, something 'just enough to fit the picture', in order to protect Bruce.⁹

Violet and Bruce returned to the house, and deliberated over what they were going to do. They decided to hide the weapon, to make it appear as if someone else had killed Eric Roberts,¹⁰ then called the police.¹¹ On their arrival from the Taree Police Station, Detective Stubbs and other uniformed officers found a man lying dead in his bed, with a hole in his chest, the wife and son standing nearby, no weapon, and a denial that there had ever been a weapon. Doctor Thurlow, who was called to the crime scene a little after 12 am, declared that Eric Roberts had been dead for two hours.¹² The police located a shotgun in nearby scrub, and Violet Roberts, who despite her confusion, and her declaration that 'It is all clouded, I don't know what happened', told the police that she had killed her husband.¹³

Violet and Bruce Roberts were placed under arrest for the murder of Eric Roberts, and were taken to the Taree Police Station. In the car on the way to the station, Detective Stubbs had a conversation with Bruce Roberts,¹⁴ in which Bruce said he

⁷ *ibid.*

⁸ *ibid.*

⁹ *R v Roberts*, summing up, p. 20 (quoted from Violet Roberts' unsworn statement).

¹⁰ *R v Roberts*, summing up, p. 27 (extracted and quoted from Bruce Roberts' Record of Interview, Question 33).

¹¹ *R v Roberts*, summing up, p. 17.

¹² *ibid.*

¹³ *R v Roberts*, summing up, p. 25.

¹⁴ *R v Roberts*, p. 17. Note that Chief Justice Taylor emphasises that this conversation 'has not been denied.' Therefore, although technically inadmissible as hearsay, an evidentiary principle to be discussed further in Chapter Seven, Bruce's comments could be construed as an out of court admission, or confession, of his involvement in the crime. The principle behind this exception to the hearsay rule is that a confessional statement is construed as being against the accused's interest, especially in criminal proceedings, therefore not likely to have been made lightly. It is also based

did not fire the shot that had killed his father, but had discussed with his mother the possibility and desirability of killing Eric Roberts on other occasions.¹⁵ Bruce told Detective Stubbs that on the night of the killing, his mother had come to him, and said, 'He is in a drunken sleep now and now is a good time to get rid of him.' He said that they then went to the house, where Violet took the rifle and the magazine from a wardrobe in the bedroom where Eric slept, and that he assembled it. Bruce then said he gave the rifle to his mother, who fired the shot. Detective Stubbs said to him: 'I still don't believe you. Think about it.' After their arrival at the station, Bruce was heard to say to his mother: 'Gee, Mum we have made a mess of this. To which she replied: 'Well, at least we don't have to be worried about him around again.' She then added: 'I did it. I did it. And I would do it again. I shot the bastard.'¹⁶

While undertaking Records of Interview with the accused, the police tried to uncover the train of events that had led to Eric Roberts' death, including the crucial question of who loaded, and fired, the gun that fatally shot him. In her version, Violet attested that when Eric fell asleep at 9.30 pm that night, she went to see Bruce in his bus, and discussed shooting Eric. She acknowledged that they had discussed shooting him on other occasions, recalling she felt that 'if he [was] not around the family we could have a much better life.'¹⁷ She said she decided to

on the idea that an accused can always testify at trial to any unreliability in the out of court statement. In Bruce's situation, this was not the case- the conversation with Detective Stubbs was not denied- and as such was admissible. For a general discussion of this point see: Andrew Ligertwood (1993), *Australian Evidence* (second edition), Butterworths, Sydney, pp. 477-487. This exception to the hearsay rule is now codified by section 65(2)(d), *Evidence Act* 1995 (NSW). It must also be noted that out of court confessions or admissions are only admissible in exception to the hearsay rule against the party making them. Thus, Bruce's comments could not be used as evidence against Violet in this context: see for example: *R v Ciesielski* [1972] 1 NSWLR 50, *R v Spinks* (1981) 74 Cr App R 263.

- ¹⁵ *R v Roberts*, p 18. Extracted and quoted from Question 19 in Bruce Roberts' Record of Interview, where Bruce allegedly denied that they discussed hitting his father on the head with a hammer to kill him: 'He said that what he said was that they would hit him on the head with a hammer and sober him up', p. 18.
- ¹⁶ *R v Roberts*, summing up, p. 29, (paraphrased from out of court statements made by the co-accused). See comments at n. 14
- ¹⁷ *R v Roberts*, summing up, p. 27 (quoted from Violet Roberts' Record Of Interview).

shoot him as she had 'had quite enough of his violence.'¹⁸ After their conversation, Violet and Bruce went to the house. Violet said she took the gun from the wardrobe in the bedroom where Eric slept, and then left the room in order to give it to Bruce to assemble. When she returned to the bedroom, 'with every intention of shooting him myself', she asked Bruce to give her the gun, and he said: 'He is already dead.'¹⁹

Bruce's Record of Interview elaborated what he had told Detective Stubbs in the police car on the way to the station. He said his mother had come to him in the bus, and said: 'Now would be a good time to get rid of him.' She then asked him if he would assemble the gun if she got it from the house. He said: 'You are not really serious, are you?', and she replied: 'Yes, I am.' Bruce stayed in the bus while his mother went inside to fetch the gun. She returned to the bus, and he put the rifle together, cocked it, put a bullet in the chamber for her, and stood the gun against the tank stand. He told her she should not be so stupid, that she 'should forget the whole thing.' Bruce returned to the bus, then heard a shot. His mother came back to him and said: 'I have just shot the old bastard and I hope he is dead.' He asked her what they were going to do, and she said: 'I do not know. Just leave him there to rot.' He said: 'We have got to do something.' 'The only thing to do', she said, 'is to give him a proper burial...we ring the police and say we found him like that.' Later, she said: 'What are we going to do with the gun?' He said: 'We will have to hide it to make it look as though he has been shot by someone.' They deliberated their options, then Bruce picked up the gun in order to hide it. On their return to the house, Violet and Bruce Roberts rang the police to say they had discovered Eric Roberts dead in his bedroom.²⁰

Violet and Bruce Roberts were assigned counsel, and the case came to trial in Newcastle before Chief Justice Taylor, and a jury, in March 1976.²¹ The case

¹⁸ *ibid.*

¹⁹ *ibid.*

²⁰ *R v Roberts*, summing up, p. 25. (reconstructed from cross examination of Bruce Roberts).

²¹ The case was decided on 15 March 1976, in Newcastle, under the criminal jurisdiction of the Supreme Court of NSW.

brought against the Roberts by the Crown was that despite the confusion over who actually pulled the trigger, both Bruce and Violet, through their records of interview, had evidenced an intention to kill Eric Roberts. As such, the elements needed to sustain a charge of murder - both *actus reus* and *mens rea* - were actionable against both of them. In these terms, the case was construed as one of dual responsibility, of common purpose in killing the deceased, and that both the person who did the shooting with intention to kill and the person who assisted with the intention of bringing about that same killing, should be found guilty of murder. In building their case, the prosecution asserted that the motive for the killing (the basis of the intention to kill) was greed and revenge over the estate of Eric and Violet's deceased son, David. David Roberts' will expressed an intention to leave his possessions, and the proceeds of insurance policies amounting to \$23 000, to his mother, and his brothers and sisters. As the will was legally invalid (it was not written in the correct form) the money by law was to be divided equally between Violet and Eric. The prosecution stressed that Violet killed Eric to regain possession of an estate that she believed was rightfully hers, and to which Eric had no entitlement on the basis of their dead son's wishes.²²

The defence counsel²³ constructed a case for Violet Roberts around the use of diminished responsibility as a mitigating defence to murder. It was contended that Violet believed she had shot her husband, but was suffering from such an abnormality of mind that her responsibility for what she was doing was so seriously affected, within the meaning of the code,²⁴ that she ought to be found guilty of manslaughter, and not murder. In order to sustain 'an abnormality of mind', the Defence relied primarily on one witness - the Government psychiatrist, Dr. Otto Schmalzbach,²⁵ who had interviewed and assessed Violet Roberts in terms of her

²² John Slee (1980), 'A Question Of Defence', *Sydney Morning Herald*, 5 September, p. 3. Note that the motive is referred to in the summing up, but additional detail is drawn from the *Sydney Morning Herald's* legal writer five years later in analysis of the defence options used, and those potentially available, in the Roberts' trial during the campaign for their release.

²³ Mr. Luland.

²⁴ See *Crimes Act* NSW (1900) s 23A.

²⁵ It is important to note the supreme influence of Dr. Schmalzbach's testimony in this case. In the report by FLAG (Feminist Legal Action Group) on women homicide

mental and psychological history. He revealed a background of a woman married to an alcoholic, who ill-treated her and their six children, who was, as a result, admitted to Kenmore Psychiatric Hospital on several occasions. Her children had been made state wards on these occasions. The expert witness described her behaviour as 'unmanageable, depressive, prone to excess drinking and exhibiting delusions of persecution.'²⁶ Violet Roberts was 'depressed and concerned at her present predicament', and retained no recollection of shooting her husband. Schmalzbach's testimony concluded: 'The fact remains that she displayed on a number of occasions...severe depression and intoxication, at one stage becoming violent and requiring physical restraint...It is further my opinion that her mental condition was further contributed to and aggravated by a personality defect.'²⁷

Violet Roberts herself did not testify - she gave an unsworn statement, read out in court, that attempted to explain her state of mind, and her confusion over the killing of her husband:

I have never been a violent person, I have never had any wish of violence towards anyone at all...although I have drunk to excess at times, my husband Eric was really terrible. He had always been very cruel to myself and to all the children, right from when they were small babies and they were all frightened of him all their lives and I

offender in New South Wales, published in 1982, the authors note that in the absence of a diagnosis of an 'abnormality of mind' by the Government Psychiatrist as required under s 23A *Crimes Act* NSW (1900), whatever the views of other psychiatrist's approached by the defence, no plea on the accused's behalf would be accepted, leaving the often complicated or conflicting psychiatric evidence to be decided by a jury. As the authors note: 'In practice, then the position of the Government Psychiatrist, Dr Schmalzbach is a powerful one. The practice of psychiatry is a field where there are many conflicting views- diagnosis being far from an exact science, especially where the state of mind being analysed is in the past rather than the present. Prejudices and preferences of the Government Psychiatrist could have considerable influence on pretrial determination of cases.', FLAG (1982), *Feminist Legal Action Group Report: Women Homicide Offenders in New South Wales*, FLAG, Sydney, p. 120. Wendy Bacon has also noted the danger of Dr. Schmalzbach's influence, especially in terms of the description of a condition he names as 'The Delilah Syndrome': 'This new syndrome focuses on neurotic women and the way in which they provoke men to violence. I hope it is not a tiding of future trends in this country.': Wendy Bacon (1983), *The Anne Conlon Memorial Lecture*, 11 August, New South Wales Women's Advisory Council to the Premier, Sydney, pp. 8-30, p. 13.

²⁶ *R v Roberts*, summing up, p. 28 (extracted and quoted from Dr Schmalzbach's report).

²⁷ *R v Roberts*, summing up, p. 29 (extracted and quoted from Dr. Schmalzbach's testimony).

was too. He often beat me up and the children, and towards the end I put up with it, because a few times I had called the police...and after the police would go away I would get another hiding for having told the police what he had done...[he also] used me very badly in various ways that I just can't speak about to anybody, it is just too bad, I always used to become very depressed, and I was very much so around the time of the shooting. My eldest son had only been dead three months, and I was in great shock, which I believe I still am, and I believe I will always be in shock because David has died. I can't say anymore.²⁸

Bruce did testify, subjecting himself to cross examination, revealing his defence as the fact that although he loaded the gun, he did not believe his mother would go through with the murder. Bruce was asked by the Crown Prosecutor: 'Did you shoot your father?', to which he replied: 'No I did not.' The Crown Prosecutor then asked him: 'Did you believe that your mother was going to shoot him?', to which he also replied: 'No I did not.'²⁹ As no other defence was adduced on Bruce's behalf, the Defence counsel argued that this negation of his common intent or purpose excluded him from culpability under the Crown's case of dual responsibility, and as such, he should not be found guilty.

In commenting on Bruce and Violet's defence, Chief Justice Taylor rightly stressed the relevant points of law, and made the issues surrounding the police evidence, on which the Crown's case was founded, very clear. The jury were under no obligation to accept the records of interview if they believed they were not executed freely or voluntarily.³⁰ He did, however, comment:

Would you really load a rifle for a woman...in the background of the hate she felt for this man, the suffering that she had had to put up with from him over a period of years, the wrongdoing that she felt and the boy felt too, by virtue of his being about to acquire half the dead boy's possessions against the dead boy's wishes [?] Do you really think it is acceptable to say, in those circumstances, he put a loaded rifle there for a woman to use with her husband lying dead drunk on the bed and she having proclaimed that it was a good idea to get rid of him, that he did not think she would use it?³¹

²⁸ *R v Roberts*, summing up, pp. 19-20.

²⁹ *R v Roberts*, summing up, p. 32, (extracted and quoted from cross examination of Bruce Roberts).

³⁰ *R v Roberts*, summing up, p 31.

³¹ *ibid.*

Chief Justice Taylor concluded by reiterating to the jury the necessity for the Crown to prove Violet and Bruce's guilt beyond reasonable doubt and to reiterate the onus on the jury to consider the Roberts' verdicts separately, although they had been charged together.³²

The jury retired at 10.37 am, on 15 March 1976. Later that afternoon, Violet and Bruce Roberts were both found guilty of the murder of their husband and father, Eric Roberts. Under the operation of section 19 of the *Crimes Act 1900* (NSW), Violet received a mandatory life sentence; and Bruce, a minor at the time, received a 15 year sentence, with a six year non-parole period.

This is the story of Violet and Bruce Roberts, that was told at their trial, a story that did not allow them to speak of other stories that were never seen, or had no place to be heard. It is, however, a story that after the campaign for their release in 1980 had achieved its goal, would appear illusory. The layers of meaning and conversion of voices that produced the crime, and the release, could never be expressed through it alone. The story of Violet and Bruce Roberts is one of multiple narratives, of interconnected yet distant genealogies, bound together in a *rhizomatic* relationship.

The Story of Violet Roberts³³

In late 1979, during her incarceration at Mulawa, Violet Roberts was interviewed as part of a study by a group called FLAG (Feminist Legal Action Group) into female

³² *R v Roberts*, summing up, p 34

³³ Although Bruce and Violet's stories are in many ways inextricable, especially in terms of the public acknowledgements of their histories, both the trial and the campaign for their release considered them in the context of co-accused. I have considered Violet's story separately. The primary reason behind this narrative device is that this thesis as a whole attempts to examine the discourse around battered women, as opposed to abused children. Although similar, Bruce's story and Bruce's circumstances are distinct from that of Violet. Her relationship with Eric Roberts, read and constructed through the marriage contract, involves a matrix of factors identified as shared by other battered women, factors which are to be both contested and investigated later in the thesis as both the basis of a feminist inspired discourse around domestic violence, and as the foundation for the establishment of the Battered Woman Syndrome as a defence to murder.

homicide offenders in New South Wales. The process of telling Violet's story within a context (legal, feminist, reformist) by FLAG alerted the principal researchers, Wendy Bacon and Robyn Lansdowne, to the injustice of Violet and Bruce's trial and sentencing. This story of Violet Roberts then, unlike that told at her trial, was from her perspective,³⁴ and began long before Eric Roberts was shot in December 1975.

From the day they married in 1952, Eric Roberts had been brutal to his wife, Violet. He was a violent alcoholic, and lashed out at her whenever he was drinking. At least once a week he would beat Violet, punching her with a closed fist in the face and body. On one occasion he smashed her face so badly - broke her teeth, pummeled her face and eyes - that she was forced to spend a few days in hospital. He was possessive and jealous, constantly accusing Violet of having relationships with other men, and tried to keep her under surveillance at all times.³⁵ As she explained in 1980:

He would only drink a little before he would start to get violent. He would sit there and his fists would start clenching and he would be staring and the fear would go through me. I would know he was going to start bashing. I would wonder what he was thinking about and then he would start accusing me of something. I usually didn't know what he was talking about. Then he would start punching.³⁶

³⁴ It must be noted that although the story can be justified as 'from [Violet's] perspective', it can not be necessarily in her voice. The story was reconstructed from material interpreted and written by FLAG and the feminist prison abolition/reform group Women Behind Bars, quoting Violet herself when appropriate. The original interviews conducted by FLAG with Violet in Mulawa could not ethically be used in this project, despite my access to them, in order to respect and preserve the confidentiality of the relationship between FLAG and Violet that was established in 1979, when the interviews were recorded; as well as to respect the wishes of Robyn Lansdowne and Wendy Bacon as custodians of this material.

³⁵ Women Behind Bars (1980b), *Release Violet and Bruce Roberts Campaign*, pamphlet, Liverpool Women's Health Centre, (RL/WB), p. 3. NB. This pamphlet was constructed directly from Violet Roberts' Application For Release on License, in 1980. The copy I have seen of the application shows clearly annotations and editing which correspond with the final text of the pamphlet.

³⁶ *ibid.*

Eric also forced Violet to have sex with him. If she said she was too tired, he would accuse her of sleeping with other men, call her names, and punch her insensible.³⁷

Eric was similarly violent and unpredictable toward their six children. Violet had to watch them constantly. If she turned her back, he would hit one of them. For example, Eric hit Bruce in the face when he was five months old, and made his mouth bleed. When Bruce was nine years old, his father punched him for asking for a cup of tea. He threw Bruce through a fibro wall, smashing it with Bruce's back and head. On another occasion, Eric came home while the children were eating their dinner, and made the three older boys get on their hands and knees outside and eat grass. He stood over them, screaming: 'Eat, swallow it.'³⁸

Violet tried to leave Eric on several occasions. Once, he beat her so badly he was gaoled for six months. As she retold it in a radio interview in 1980:

I think he would have beat me to death that time if it hadn't been for his father and a couple of brothers...they were visiting- it was New Year's Eve, and they all pulled him off me or...I really believe he would have pummeled me to death. He was beating me so savagely out in the paddock...the nightdress was just saturated with blood - it was dripping with blood when I took it off- off my face - my nose was bleeding - mouth all busted - it was a really savage hiding and he did get six months for that.³⁹

Even with Eric in gaol, Violet found it difficult to leave. She had no money, six children, and she lived in Pacific Palms, isolated and far from her family. She was only able to leave when her brother turned up in a car, and drove Violet and the children to her sister's house in Goulburn.⁴⁰

In 1967, Violet Roberts had a nervous breakdown, and was admitted to Kenmore Psychiatric Hospital. She later reflected on her state of mind: 'I was extremely

³⁷ *ibid.*

³⁸ Application For Release: Violet Roberts, Bruce Roberts, 20 April (1980),(RL/WB), para 4.2.

³⁹ 2 SER-FM. Interview with Bruce and Violet Roberts (transcript), Annie Bremmer and Chris Deegan, 25 October 1980, p 3 (RL/WB).

⁴⁰ *Women Behind Bars* (1980b), p. 3.

depressed. I felt I could cope no longer.⁴¹ She was further devastated when her children were made wards of the state.

Between 1967 and 1974 Violet supported herself by working as a domestic, and did not see Eric Roberts. She had moved back to Pacific Palms in 1971, and lived with Eric's father, and several of her children, in the family home. There was no other way that Violet could have got a house for the family to live in together, and she knew that they would have protection from Eric. Mr. Roberts had made it very clear that his son was not welcome in Pacific Palms.⁴²

In January 1974, Mr. Roberts died. By October, Eric Roberts had contacted Violet, telling her he had given up drinking and was lonely, that he was a changed man. She took him back, but within a few months he was drinking again, and his behaviour was worse than it had ever been. He was violent and crude, whether drinking or sober. He cashed Violet's pension cheques at the local shops, and spent the money, her money, on alcohol.⁴³ She tried to tell him to leave, but he ripped her dress off her shoulder, and punched her insensible. She was terrified, and couldn't leave because Eric kept the keys to the car, her car, in his pocket, and her area was not served by public transport. She was alone and isolated, and became totally incapacitated by grief when her eldest son, David, died of leukemia in October 1975. Violet described this time of her life, five years later, like this:

The two months between David's death and the killing of my husband were like a nightmare. I was in shock and grief at the death of my son. I felt completely trapped in a life that had become completely unbearable. Twice I tried to take my own life. Once I lay on the road wanting to be run over by a car. On another occasion I took an overdose of Valium, prescribed to me by our family doctor, Dr. Sanders.⁴⁴

By election day, December 13 1975, Violet Roberts was despairing. She went with Eric to the local school to vote. He was drunk, and dragging her by the wrist, saying to her: 'Hold me up, I'm pissed.' She was frightened. She knew his patterns,

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ *ibid.*, p. 4.

⁴⁴ *ibid.*

knew that when they returned home the arguing, the violence and the enforced sex would continue as they always did.⁴⁵ Violet Roberts recalled the events of that day vividly:

I was extremely depressed and miserable. I was also very tired and I had a sore and swollen right hand. Eric had broken a bone in one of my fingers two days previously when we were staying overnight at a motel in Sydney, by wrenching and twisting my hand.

We had gone down to Sydney to collect our dead son David's gear. I was still numb from his death and collecting his clothes made all the grief come back. On [that day] we were up at 6 am and spent the whole day travelling by public transport from Sydney back to Pacific Palms.

All the way Eric was upending a bottle on the train and bus, drinking cheap wine out of a bottle in brown paper. Apart from the fact that I knew [this meant a beating later], I was as mad as a hornet that he didn't have the decency to wait until he got home...I felt such a fool, but wasn't game to say anything because he would have started on me right then and there. So I just seethed.⁴⁶

That night, worn out, tired and miserable, Violet waited until Eric was asleep and then left the house. She went to the back of the lot, to where one of her son's, Bruce, lived in an old bus. Together, they drank a few glasses of wine, talked and played cassettes. After several hours, she returned to the house. What happened then, she later recalled like this:

I can remember walking up the back steps of the house. To my knowledge I did not have a gun in my hand. I can remember walking up those steps but I do not remember walking into the house. I believe now that he was in bed asleep but it could easily have been the other way where he would have been waiting there to grab me. Because that has happened so many times. I do not remember hearing a shot...Bruce has told me that he shot him, and that I was not in the room when he was shot. I believe that to be true. But I wish it had been me who shot him, so that my son, who has already suffered so much hell would not have to suffer any more.⁴⁷

Bruce rang the police. As soon as they arrived they separated Bruce and Violet, and took them to Taree Police Station. Violet told Detective Stubbs that she had killed

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ *ibid.*

Eric because she believed from something he said that he suspected Bruce, and she wanted to protect her son. They were both made to sign records of interview, and both were charged with murder. This is how Violet recalled the interview five years later:

At the time of the record of interview at 6.45 am...I had been up since 6 am the previous morning. I had travelled from Sydney all day and had been embarrassed and humiliated by my husband on the journey. I had had some drinks with Bruce in his bus. I was completely exhausted and shocked by what had happened. My hand was really hurting. It was all puffed up. I felt I didn't care what happened to me I was only worried about what would happen to Bruce. At the time I would have signed anything...[Anyway] we were in the Taree cells...when the detective came out two days after we had been there and he said to me 'who's handling your son's [David's] estate?' and I said to him, 'what's my son's estate got to do with this?' And he said, 'just a bit of information we want.' And I said, 'well that's got nothing to do with the case.' But he wanted the information to make the motive [for trial]. But you see, it's just not true. The money, the child's money had nothing to do with that whatsoever. Nothing. It was entirely the brutality.⁴⁸

Violet met her designated lawyer ('someone from the public service')⁴⁹ for half an hour the day before the trial commenced. Violet told him what it was like to be married to Eric Roberts for twenty four years, what it was like to try and leave. She told him about her doctor, Dr. Sanders, who had treated her for injuries and depression during her marriage to Eric, and about her neighbours, who had witnessed the fear, violence and torture that Eric Roberts had inflicted on his wife and children for so many years.⁵⁰ The lawyer, however, never attempted to include the history of abuse into Violet's case. At the trial, he relied on a defence of diminished responsibility, using the government psychiatrist's report to attempt to establish that Violet was suffering from an abnormality of mind when she committed the crime.⁵¹ As such, he never called any of the witnesses (such as neighbours of the Roberts') who could have testified to the abuse suffered by

⁴⁸ 2 SER-FM (1980), p. 3; *Women Behind Bars* (1980b), p. 4.

⁴⁹ Application for Release (1980), para 10.1.

⁵⁰ 'Justifiable Homicide', (transcript) *60 Minutes*, Channel Nine, 9 March 1980, (RL/WB), pp. 4-5.

⁵¹ *R v Roberts*, summing up, p. 31.

Violet and Bruce. Violet recalled that they were never given the opportunity to speak:

I remember I asked for Mr. and Mrs. N to be called as witnesses...they could both have given evidence that they had seen me with bruises on my face at different times. When we were at the trial, we walked past them in the recess. I believed that they were going to be called. I was surprised when they were not...⁵²

Violet too was silenced. Her history was never heard in court, as she gave an unsworn statement. Removed from the drama played out before her, she was viewed in the dock that day as a key figure in the legally expeditious narrative of greed and revenge:

I expected that when the prosecutor had finished my barrister would speak about my husband's violence...I couldn't do anything about it during the trial, however, because I was sitting in the dock and so couldn't speak to my lawyers. Also I was still numb from David's death on the day I [was meant to] stand up and speak from the dock. I was especially upset because it was his birthday...[and they kept] talking about his money...⁵³

Despite the adduction of evidence to support a defence of diminished responsibility, and despite the fact that the Crown did not significantly contradict this defence, on March 17 1976, the jury convicted Violet and Bruce of murder, and Violet was sentenced to life imprisonment under section 19 *Crimes Act* 1900 (NSW).⁵⁴

Aware that in two recent similar cases a history of violence had been adduced as evidentiary preconditions to the murder of a spouse by a woman or other family member,⁵⁵ Wendy Bacon and Robyn Lansdowne, through FLAG and the

⁵² Application for release (1980), para 9.4.

⁵³ *ibid.*, para 9.7

⁵⁴ *R v Roberts* p. 20. See Chapter Six for a discussion of the operation of and reform to section 19.

⁵⁵ The two cases referred to were the Kroppe case, decided in Melbourne in 1978, and the Calleja case in New South Wales in 1979. In the Kroppe case, William Kroppe, 17, shot his father 17 times with a .22 rifle in December 1977. William Kroppe was charged with murder, and his mother Josephine, of conspiring to murder. As the defence of diminished responsibility was not available in Victoria, the defence relied on self-defence to mitigate the charge, and as such adduced extensive evidence of

prison/abolition reform group Women Behind Bars⁵⁶, initiated a campaign for Violet and Bruce's release.

The campaign, to be examined in detail in Chapter Six, was itself a product of the interconnecting politics of prison reform and Women's Liberation, and a proactive media and a liberal state. It successfully galvanised public opinion around the Roberts' circumstances, and harnessed the growing understanding of domestic violence in the community. Through this campaign, Violet's own story, her experiences of fear and violence, became central evidentiary matters, and the basis of the narrative that resulted in her (and Bruce's) release on license in October 1980.⁵⁷

Frederick Kropes's violence towards his wife and three children during the 30 year period of his marriage. The co-accused's sister and daughter, Gloria Kropes, was the reigning Miss Australia at the time the case went to trial, resulting in favourable and sympathetic press. The Kropes were acquitted. In the Calleja case, Charles Calleja was shot by his sixteen year old daughter in January 1979. His wife Marcia and their daughters, aged 16, 18 and 19, were charged with murder. They pleaded guilty to manslaughter, relying on a defence of diminished responsibility as per section 23A *Crimes Act* 1900 (NSW). The plea and the accompanying psychiatric evidence were accepted, and as such the case was not tried before a jury. Evidence documenting Charles Calleja's history of violence toward his family was adduced at trial. The defence argued that there was only one motive for their actions: self-preservation, and that diminished responsibility should be pleaded to mitigate their sentences. All four women were released on a five year, \$100 good behaviour bond. See: Robyn Lansdowne (1980), 'Violet Roberts: Justifiable Homicide?'. *Sydney Women's Liberation Newsletter*, March, pp 2-3; John Slee (1980), 'The Inside Report', *Sydney Morning Herald*, September 4, p. 3.

⁵⁶ Women Behind Bars (WBB) was a feminist group formed in 1975 committed to improving the conditions for women in prison, and working toward the abolition of prisons altogether. The preconditions of WBB, and the role played by Wendy Bacon in this group, will be examined in Chapter Five.

⁵⁷ See Chapter Six for a discussion of the campaign, and for a discussion of the meaning and process of a release on license.