

OCA vindicates woman who suffered from PTSD, domestic abuse



Toronto criminal lawyer [Jacob Stilman](#) says the Ontario Court of Appeal (OCA) has vindicated a woman he represented at trial, acquitting her of all drug charges after it agreed the lower-court judge failed to provide the jury with the tools it needed to reach a proper verdict. [Toronto Sun](#)

“This is a case that meant a great deal to me,” he tells AdvocateDaily.com. “This really is somebody who had been horribly treated, first by a boyfriend and then by the justice system, which gave her no latitude.

“Even after evidence was presented at the sentencing hearing from an expert psychologist and her own physician that this woman suffered from extreme PTSD due to her domestic abuser, the Crown still was pushing for a four-year prison sentence. Fortunately the trial judge accepted the opinions of the expert and only imposed a conditional sentence.”

Stilman represented Xiaomin Li, who was convicted of unlawfully producing marijuana and possession of marijuana for the purpose of trafficking. She received an 18-month conditional sentence. As Stilman points out, this sentence would not even be available any more, since this offence now carries a mandatory two-year prison sentence.

“I guess Ms. Li was 'fortunate' to have been charged in 2009 – otherwise the option to keep her out of prison would not even have been available to the judge at trial,” he says.

Stilman says this case, where a traumatized woman was forced to play a minor role in a grow-op, underscores the absurdity of mandatory minimum prison sentences.

At trial, Stilman argued that Li’s conduct was excused by duress as she had participated in the crimes at the behest of a man with whom she had been involved in a romantic relationship. Li testified that she was physically, emotionally and sexually abused and that the man had threatened to kill her and her 18-year-old daughter.

Stilman explains it is s. 17 of the *Criminal Code* that sets out the statutory defence of duress, where a person commits an offence under the immediate threat of death or bodily harm and is excused from committing the offence.

“Anyone trying to avail themselves of this defence has to jump through a number of hoops, and the legal bar is set very high,” he says. “But in the end, the test still permits the jury to apply what we call a modified objective test, in other words, would a reasonable person placed in the same circumstances as the accused have acted in the same way and engaged in the criminal activity.

“Also, since the accused has to demonstrate there was no reasonable avenue for escape, the circumstances of a serially abused woman who is in the direct company of her abuser during the commission of the offence are obviously different than those of someone who is not caught up in a toxic and abusive relationship. However, this distinction was not made clear in the trial judge’s instructions to the jury.”

Stilman says in the opinion of two experts and another doctor who gave evidence at trial, Li suffered from severe Post-Traumatic Stress Disorder (PTSD) and displayed all the signs of Battered Woman Syndrome.

“At trial, my argument to the jury was, when they were assessing what a reasonable person would do, they would have to see it through the lens of somebody who is suffering from Battered’s Woman Syndrome and PTSD. I argued the jury members had to modify the test and look at it in terms of Li's circumstances.”

The ground of appeal, argued by criminal lawyer Timothy E. Breen, was that “the trial judge erred in failing to relate the expert evidence regarding battered spouse syndrome to the objective elements of duress.”

The Court of Appeal in [R. v. Li](#), 2016 ONCA 573 (CanLII), agreed and allowed the appeal.

The OCA said while the elements of duress were described in the judge's charge to the jury as were an expert's testimony supporting Li's claim she was a victim of abuse and the behavioural characteristics of someone subjected to such abuse, "no effort was made to relate her evidence to the legal issues and principles in a manner that would equip the jury to reach its verdict.

"Read as a whole, the charge did not provide the jury with the tools it needed to assess the appellant's defence. As a result, the convictions cannot stand," Justice George R. Strathy writes for the panel.

Stilman says while Li has already served her conditional sentence, the OCA decision is a positive outcome for his client, who can continue rebuilding her life.

"This is a woman who came here after the 1989 [Tiananmen Square massacre](#) and has never been accepted as a refugee here in Canada — she has been in Canada on a temporary visa and would have been deported but for the efforts of her immigration lawyer, Roger Rowe," Stilman says. "There was a deportation scheduled for her about a week before the appeal hearing and Rowe was able to get it stayed by the federal court. Had this verdict not been reversed, Ms. Li, who has raised her daughter on her own, and who has worked hard every single day since her arrival in Canada, would have faced certain deportation."