

***R v Pearson* [2015] QCA 157 (28 August 2015) – Queensland Court of Appeal**

‘Directions and warnings for/to jury’ – ‘Evidence’ – ‘Intent’ – ‘Murder’ – ‘Physical violence and harm’ – ‘Propensity evidence’ – ‘Relationship evidence’

Charge/s: Murder.

Appeal Type: Appeal against conviction.

Facts: The appellant was convicted of the murder of his wife (See further at [2]-[5]). It is unclear whether at the time of the offence, there was a current or lapsed protection order against the appellant in favour of his wife. The issues at trial concerned whether he had the requisite intent to kill or do grievous bodily harm, and whether the defence of provocation arose.

Issue/s: One issue on appeal was whether the trial judge misdirected the jury in regards to the relevance of evidence of prior acts of domestic violence and discreditable conduct. In particular, the appellant submitted that the jury were misdirected about how they could use the evidence when deciding whether the appellant had the requisite intent for murder.

Decision and Reasoning: The appeal was dismissed. At trial, the jury was directed to the effect that the evidence was relevant to explain the nature and animosity of the relationship between the appellant and the deceased. They were specifically directed that if they were to use that evidence to assist in determining the appellant’s state of mind at the time of the offence, they must be satisfied beyond reasonable doubt that the past acts occurred. Holmes JA (Morrison JA and Henry J agreeing) held that s 132B of the *Evidence Act 1977* can be used to show a particular propensity of the accused to commit acts of a similar nature, as well for specific issues like intent. Her Honour, applying the approach of the High Court in *Roach v The Queen* [2011] HCA 12, noted that these two uses are distinct. In this case, the domestic violence evidence was only relevant as relationship evidence to prove intent. Propensity was not relevant because it was not in dispute that the appellant had caused the death of his wife. The jury were directed to this effect. A general propensity warning was not needed for the same reasons.