

***R v Reed* [2014] QCA 207 (26 August 2014) – Queensland Court of Appeal**

‘Assault occasioning bodily harm’ – ‘Directions and warnings for/to jury’ – ‘Evidence’ – ‘Murder’ – ‘Physical violence and harm’ – ‘Propensity evidence’ – ‘Purpose of evidence’ – ‘Relationship evidence’

Charges: Assault occasioning bodily harm, murder.

Appeal Type: Appeal against conviction.

Facts: The appellant was convicted of the assault occasioning bodily harm and murder of his partner’s 16 month old child. See further at [6]-[17].

Issue: Whether the trial judge erred in admitting evidence of prior facial grazing injuries suffered by the child.

Decision and Reasoning: Henry J (with whom Gotterson JA and McMurdo P agreed) firstly held that this evidence was not inadmissible purely because of a possible innocent explanation for the injuries. His Honour considered all the non-fatal injuries on the child in their totality, and found that the probability that they occurred accidentally became too remote. The evidence was capable of supporting an inference (in combination with the other evidence) that the non-fatal injuries were the result of deliberate violence by the appellant. This evidence, of itself, was not indispensable to a finding of guilt – it assisted as ‘strands of a cable rather than as indispensable links in a chain’ (See at [39]). The evidence was also relevant to the proof of the charges as relationship evidence pursuant to 132B of the *Evidence Act 1977*. The trial judge correctly found that injuries can be probative of the history of a domestic relationship. It also potentially showed a propensity of the appellant to commit similar violence. However, the trial judge did not rule on this and in fact gave a warning against propensity reasoning. Notwithstanding, the trial judge did make an error of law in failing to sufficiently instruct the jury about the purpose of the evidence of the uncharged injuries, applying the High Court decision in *Roach v The Queen* [2011] HCA 12. The trial judge did tell the jury that the evidence could be used to show that the nature of the relationship was violent, but he did not go further to explain that the purpose of putting this history of violence before the jury was to provide an ‘informed context’ (See at [69] – [70]) for the jury’s consideration of the charges. Notwithstanding, the appeal was dismissed pursuant to the proviso.