

***R v Roach* [2005] VSCA 162 (8 June 2005) – Victorian Court of Appeal**

‘Battered woman syndrome’ – ‘Burglary’ – ‘Conduct endangering persons’ – ‘Deterrence’ – ‘Negligently causing injury’ – ‘Physical violence and harm’ – ‘Sentencing’ – ‘Theft’ – ‘Where the victim is an offender’

Charge/s: Burglary, theft, conduct endangering persons, negligently causing serious injury x 2.

Appeal Type: Appeal against sentence.

Facts: The female applicant and Mr O’Neill, her partner and co-offender, broke into a milk bar and stole goods and cash. The applicant drove off from the store with Mr O’Neill as her passenger. They were chased by police, with Mr O’Neill threatening to kill her if she slowed down. The applicant crashed the car into another vehicle driven by Mr Hahn. The impact caused both vehicles to be engulfed in flames, trapping Mr Hahn inside his vehicle. He suffered extensive burns to his body. Mr O’Neill also suffered injuries as a result of the crash. The applicant was sentenced to a total effective sentence of six years imprisonment, with a non-parole period of four years.

Issue/s: One of the grounds of appeal was that the sentencing judge erred in his assessment of the applicant’s moral culpability by giving insufficient weight to the threats made to her by her partner.

Decision and Reasoning: The appeal was dismissed. As per Callaway JA at [15]:

‘the judge did accept that O’Neill’s threats motivated the appellant to drive as she did and that she took those threats seriously because of the history of violence directed towards her. There was an element of “battered woman” syndrome. Nevertheless, His Honour said, the police were present and protection would have been immediately available to her. I appreciate that she would have feared what O’Neill might do subsequently, but it is one thing to engage in shop-lifting or the like under a threat of violence; it is another thing altogether to engage in conduct so dangerous that it results in the kind of injuries sustained by Mr Hahn. General deterrence is not excluded by threats. On the contrary, general deterrence may provide a counter-threat. The judge was not in error in saying that general deterrence must be the paramount sentencing consideration for offences of the kind the subject of counts 3 to 5 and that a substantial period of imprisonment was required to deter others minded to act in a similar way. I do not consider that his Honour undervalued the threats from O’Neill, particularly when the sentences he imposed on counts 3 to 5 are taken into account’.