

***Austic v The State of Western Australia* [2010] WASCA 110 (11 June 2010) – Western Australia Supreme Court (Court of Appeal)**

‘Circumstantial evidence’ – ‘Directions and warnings for/to jury’ – ‘Evidence’ – ‘Murder’ – ‘Offender character references’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Sentencing’

Charge/s: Murder.

Appeal Type: Appeal against conviction and sentence.

Facts: The appellant was convicted for the murder of the deceased; with whom he had been in a casual sexual relationship for 12 months. The deceased was 22 weeks pregnant with the appellant’s child at the time of her death. The appellant was intoxicated, attended the deceased’s home and stabbed her 21 times in her bedroom. He then walked back to his home, threw away the knife and left the deceased. He destroyed evidence that could implicate him in the murder. The prosecution’s case relied purely on circumstantial evidence. He was sentenced to life imprisonment with a non-parole period of 25 years.

Issue/s: Some of the issues concerned –

1. Whether the trial judge erred by not directing the jury that they had to be satisfied beyond reasonable doubt of certain facts because these facts were indispensable links in the chain of reasoning towards a finding of guilt.
2. Whether the non-parole period was manifestly excessive.

Decision and Reasoning: The appeal was dismissed.

1. The Court held that there was a very strong circumstantial case against the appellant and the trial judge’s directions were sufficient for the jury to understand that they had to be satisfied beyond reasonable doubt that the appellant had the opportunity to and in fact did kill the deceased.
2. The appellant submitted that the 25-year non-parole period was excessive given various comparable cases, the objective seriousness of the crime and the appellant’s personal circumstances. He also submitted that the fact that the crime did not involve multiple victims or multiple offences and the lack of any lengthy premeditation was significant. The appellant had no relevant criminal history. He was previously in a de facto relationship which did not involve violence, had two daughters and had numerous references attesting to his good character. The appellant’s increasing alcohol consumption had been a factor in the breakdown of the relationship. He had been suffering from depression for which he was receiving psychological treatment. However, the Court found the non-parole period was not manifestly excessive. A significant aggravating factor was the deliberate killing of the unborn child. While a psychologist’s report indicated that the appellant was a low risk of re-offending, he refused to admit guilt or show remorse. Further, the crime was committed ‘in a calculated and savage manner and for a shallow and appalling motive’ (see at [186]) such that little weight could be afforded to the appellant’s

antecedents.