

***R v Clark* [2009] QCA 2 (6 February 2009) – Queensland Court of Appeal**

‘Attempted murder’ – ‘Circumstantial evidence’ – ‘Damaging property’ – ‘Directions and warnings for/to jury’ – ‘Impact on children’ – ‘Physical violence and harm’ – ‘Propensity evidence’ – ‘Relationship evidence’ – ‘Separation’

Charge/s: Attempted Murder.

Appeal Type: Appeal against conviction and sentence.

Facts: The appellant was convicted for the attempted murder of his former wife. There were cross domestic violence orders in place against each other. He was sentenced at trial to 16 years’ imprisonment. The case turned on purely circumstantial evidence. See further at [3]-[38].

Issue/s: Whether the trial judge made errors by -

1. Not issuing a *Shepherd v R* [1990] HCA 56 direction which deals with the how the jury must use pieces of evidence individually.
2. Allowing the jury to consider evidence of the history of the relationship between the parties.

The other issue was whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal against conviction was dismissed. The Court noted that in a case turning on circumstantial evidence alone, it is not necessary that every intermediate conclusion of fact made by the jury be proven beyond reasonable doubt. There may be some instances, as McMurdo P observed (at [40]) if it is necessary to ‘reach a conclusion of fact as an indispensable intermediate step in the reasoning process towards an inference of guilt, that conclusion must be established beyond reasonable doubt’. However, generally, only the offence as a whole needs to be proven beyond reasonable doubt. In regards to the relationship evidence, the primary judge directed the jury to the effect that such evidence was not directly relevant to the alleged offence, but only to put the relationship between the parties in context. The Court held that this direction was adequate. The Court also refused leave to appeal against sentence, finding that the premeditated nature of the offending and the lack of mitigating factors meant that this was at the highest end of the scale of attempted murders.