

***R v Ridgeway* [2020] QCA 38 (10 March 2020) – Queensland Court of Appeal**

‘Alternative hypothesis’ – ‘Attempted murder’ – ‘Children’ – ‘Evidence’ – ‘History of abuse’ – ‘Jury directions’ – ‘Miscarriage of justice’ – ‘Misdirection or non-direction’ – ‘Motive’ – ‘Post-offence conduct as evidence of consciousness of guilt’ – ‘Separation’ – ‘Verdict unreasonable or insupportable having regard to evidence’

Charges: Attempted murder x 1 (aggravating circumstance of being a domestic violence offence).

Case type: Appeal against conviction

Facts: The appellant man was convicted of one count of attempted murder (domestic violence offence) and was sentenced to 10 years’ imprisonment with a non-parole period of 8 years. The appellant, an electronics engineer, was alleged to have attempted to murder his wife (the victim) by connecting a garden hose to a nitrogen gas cylinder which was then attached to the inside of the caravan where the victim slept. There was evidence that the appellant had motive to kill the victim because she was taking preliminary steps to divorce him and had demanded that he leave the matrimonial home. She had also left a will making him her beneficiary. In his police interview, the appellant denied knowledge of the contraption. At trial, however, he admitted that he constructed the contraption as a drainage system ([74]). Further, the appellant acknowledged his relationship difficulties with the victim and told police that they had an argument concerning their daughter. According to the victim, that argument led to the appellant pushing her against a wall while threatening to punch her. As a result, she called the Domestic Violence Hotline.

In summary, the appellant’s case was that the Crown had failed to exclude the hypothesis that the victim had constructed the apparatus, because there was evidence that:

- > She had a motive to implicate her husband falsely in a murder attempt.
- > The appellant must have appreciated that the apparatus could not have killed his wife.
- > The contraption was ineffective to kill.

Issue: The appellant appealed against conviction. He submitted that the guilty verdict could not be supported by the evidence or was unreasonable ([52]) (Ground 1). He also claimed that the trial judge failed to direct the jury that an essential step in the chain of reasoning was that the appellant believed that introducing nitrogen into the caravan would kill his wife ([97]) (Ground 2), and complained about the trial judge directions as to the use of post-offence conduct as proof of his intention ([107]) (Ground 3). His appeal also included the claim that there was a failure to distinguish attempted murder from other offending based on the same physical acts, but with different mental elements, which might have explained the post-offence conduct ([114]) (Ground 4).

Held: All four grounds of appeal were dismissed. Sofronoff P (with Philippides JA and Flanagan J agreeing) noted that it was open to the jury to reject the appellant's explanation for constructing the contraption. His credit was impaired by his failure to offer this explanation when first interviewed by police. Further, the verisimilitude of his explanation was reduced by the uselessness of the contraption as a drainage system, and the inconsistencies in his reasons for erecting the drainage system. The jury was therefore entitled to accept the victim's evidence and be satisfied beyond reasonable doubt that the appellant constructed the apparatus to deliver gas into the caravan in which his wife was sleeping ([81]-[82]). The evidence that the victim had informed the appellant that she wanted a divorce, together with the evidence of lies to police, supported a conclusion that the appellant believed that he had built a system that would be effective to kill ([88]). His Honour therefore held that the jury could be satisfied beyond reasonable doubt of the appellant's guilt.

As to the second ground of appeal, the appellant was unable to establish a miscarriage of justice by merely asserting that the trial judge miscarried through a lack of proper directions about proof of the appellant's intention ([106]). A redirection was not sought ([101]). Whilst the trial judge did not identify the series of evidentiary steps that the jury could take to find guilty intent, doing so would have assisted the prosecution, not the defence ([106]).

Further, the appellant submitted that there was an alternative hypothesis that he had set up the apparatus to harass his wife, and therefore, his post-offence conduct was indicative of his sense of guilt for trying to harass her ([109]). This submission failed because harassment by the use of nitrogen, as an alternative hypothesis, did not arise as an issue in the case ([110]).

Ground 4 was also rejected. Citing *R v Baden-Clay*, the Court stated that "it is not necessary for a jury to consider a hypothesis which was not put to it for tactical reasons, which is directly contrary to the evidence that the accused gave at the trial and which is directly contrary to the way in which the accused's counsel conducted the defence". Any intention on the appellant's part to do anything other than kill his wife or drain water did not arise on the evidence and did not have to be considered ([120]).