



HIGH COURT OF AUSTRALIA

4 May 2011

ROACH v THE QUEEN [2011] HCA 12

Mr Roach was convicted by a jury of assault occasioning bodily harm, arising out of an alleged incident with the complainant, a woman with whom he had been in an intermittent relationship for two and a half years. Mr Roach had telephoned the complainant asking if he could visit her. Shortly thereafter he arrived at the complainant's house, and immediately went to get a drink from the refrigerator. When the complainant suggested that he ought not to help himself before being invited to do so, Mr Roach allegedly punched her face and arms, then pulled on her left arm, which he had previously injured. He then spoke aggressively to her, before punching her another eight times.

At Mr Roach's trial in the District Court of Queensland, the trial judge admitted evidence of other assaults by Mr Roach upon the complainant in the course of their relationship. Section 132B of the *Evidence Act 1977* (Qld) ("the Act") applies, inter alia, to proceedings for assault occasioning bodily harm and states that "[r]elevant evidence of the history of the domestic relationship between the defendant and the person against whom the offence was committed is admissible in evidence in the proceeding."

In the Court of Appeal Mr Roach argued that, in considering whether to admit such evidence under s 132B, the trial judge ought not to admit that evidence if, in the context of the prosecution case, there was a reasonable view of that evidence consistent with innocence ("the rule in *Pfennig*"). The rule in *Pfennig* recognises the prejudicial effect of evidence used to prove a propensity of the accused ("propensity evidence"), and applies at common law to propensity evidence as a measure of the probative force of that evidence. Mr Roach contended alternatively that if the evidence were admitted, the jury ought to have been directed that they could not rely upon it unless satisfied of its truth beyond reasonable doubt. The Court of Appeal rejected both arguments and dismissed the appeal. It held that the sole test for admissibility under s 132B of the Act is relevance, and that the rule in *Pfennig* had no application.

In the High Court, Mr Roach advanced the same arguments. He argued further, and in the alternative, that the rule in *Pfennig* ought to be considered and applied in connection with s 130 of the Act. Section 130 provides that nothing in the Act "derogates from the power of the court in a criminal proceeding to exclude evidence if the court is satisfied that it would be unfair to the person charged to admit that evidence."

Today the High Court dismissed the appeal. It observed that s 132B has a potentially wide operation not restricted to similar fact evidence tendered to prove propensity on the part of the accused, and that the sole test of admissibility for evidence of domestic violence in the history of a relationship is relevance. The Court observed that, while the rule in *Pfennig* addressed the same factors as are relevant to a court's discretion to exclude evidence on the basis of unfairness, the rule in *Pfennig* was of the nature of an exclusionary rule of law rather than a discretion. Therefore the rule could not be imported into the power referred to in s 130, which is discretionary in nature.

In relation to the adequacy of the directions to the jury, the High Court held that the directions explaining the limited use to which the evidence of the history of the relationship between Mr Roach and the complainant may be put were sufficient, and that it was neither necessary nor appropriate for any direction to be given about the standard of proof to be applied to that evidence. Contrary to the view taken in the Court of Appeal, the High Court observed that there was a dual purpose for which the evidence was tendered: evidence both of the alleged offence and as "relationship" evidence.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*