

Circumstantial Evidence

Circumstantial evidence is evidence of circumstances which can be relied upon not as proving a fact directly but instead as pointing to its existence. It differs from direct evidence, which tends to prove a fact directly: typically, when the witness testifies about something which that witness personally saw, or heard. Both direct and circumstantial evidence are to be considered.¹

To bring in a verdict of guilty based entirely or substantially upon circumstantial evidence, it is necessary that guilt should not only be a rational inference but also that it should be the only rational inference that could be drawn from the circumstances.

If there is any reasonable possibility consistent with innocence, it is your duty to find the defendant not guilty. This follows from the requirement that guilt must be established beyond reasonable doubt.

Commonly, three special directions are given in substantially circumstantial cases

1. as to drawing inferences;²
2. that “guilt should not only be a rational inference but should be the only rational inference that could be drawn from the circumstances”;³
3. that if there is any reasonable hypothesis consistent with innocence, the jury’s duty is to acquit.⁴

The second and third are but different ways of conveying, or emphasising, the meaning of “beyond reasonable doubt”.⁵ So while such directions may be helpful “in many, if not most, cases involving substantial circumstantial evidence”, “there is no invariable rule of practice” that such directions “should be given in every case involving circumstantial evidence”.⁶

¹ A possible addition is: **It is not necessary that facts in dispute be proved by direct evidence. They may be proved by circumstantial evidence alone, by direct evidence alone, or by a combination of direct and circumstantial: that is, both direct and circumstantial evidence are acceptable proof of facts. So you should consider all the evidence, including circumstantial evidence.**

² See Summing-up, General, Primary Facts and Inferences, especially footnote 7.

³ *Shepherd v The Queen* (1990) 170 CLR 573 at 578. See also *R v Goldsworthy, Goldsworthy & Hill* [2016] QSC 220 at [10], “where the Crown case rests either wholly or partly on circumstantial evidence, a no case submission is to be decided on the basis of such inferences that are reasonably open in support of the Crown case”.

⁴ *R v Perera* [1986] 1 Qd R 211 at 217; *R v Owen* (1991) 56 SASR 397 at 406.

⁵ *R v Holman* [1997] 1 Qd R 373 at 380.

⁶ *Shepherd* at 578.

A jury will often be asked to infer guilt from a combination of several intermediate facts. Accordingly, it is not in every circumstantial case that particular items of evidence need be proved by the prosecution beyond reasonable doubt.

There will, however, be cases where it is necessary to isolate and identify for the jury “intermediate facts constituting indispensable links in a chain of reasoning towards an inference of guilt; if so it may well be appropriate to tell the jury that such facts must be proved by the prosecution beyond reasonable doubt. Where the evidence consists of strands in a cable rather than links in a chain, it will not be appropriate to give the direction just mentioned”.⁷

Where the case is not based entirely or substantially on circumstantial evidence, a modified direction in respect of circumstantial evidence may be appropriate when summing-up in respect of an element of the offence which is based entirely or substantially on circumstantial evidence.

⁷ *R v Jones* [1993] 1 Qd R 676 at 680; cf JRS Forbes, *Evidence Law in Queensland*, 3rd ed (1999) at [A.106].