

**BETWEEN:**

**DL**  
Appellant

**and**

**THE QUEEN**  
Respondent

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**RESPONDENT'S  
OUTLINE OF ORAL ARGUMENT**

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**Part I: Certification:** This outline is in a form suitable for publication on the internet.

**Part II – Outline of Propositions:**

*Scope of the appeal*

1. The asserted error on which the Notice of Appeal is premised is a failure to identify the particular “sexual offences”, separated by at least three days, which were found proved. It does not raise whether the reasons were inadequate because they did not identify the process of reasoning leading to guilt (RS [2]).
2. The respondent accepts that if the reasons in this case do not adequately identify the acts of sexual exploitation found proved, they would be inadequate as a matter of law such as to give rise to a miscarriage of justice in this case (RS [14]). However, that would not lead to the conclusion that the verdict is otherwise uncertain, unreasonable or unsafe (RS [17]-[20]).
3. The appellant’s argument that the Notice of Appeal complains that the process of reasoning is unexplained, and that the trial judge reduced the question to a contest between the credit and reliability of witnesses, leverages quite a different argument from the ground upon which special leave was granted, which can be determined without reference to such (unstated) matters.

*Trial judge’s process of reasoning*

4. The trial judge expressly did not treat the question of proof beyond reasonable doubt as a contest between witnesses (Reasons [58] AB 353). Specifically:
  - 4.1. The trial judge’s acceptance of the complainant at the end of the consideration of his evidence was not expressed as a final finding (Reasons [66]-[67] AB 355).
  - 4.2. The trial judge then considered the evidence of the appellant (Reasons [569] AB 355).
  - 4.3. The trial judge then considered whether the matters raised relating to the complainant and his evidence caused him to have a reasonable doubt and concluded that they did not. He also rejected the evidence of the appellant on substantive issues when he denied the alleged sexual conduct (Reasons [73] AB 356).
  - 4.4. His Honour then made his ultimate finding (Reasons [74] AB 356).
5. It is not open to conclude that the trial judge rejected the appellant’s evidence on the basis of his acceptance of the complainant’s evidence. To the extent that the respondent’s written submissions suggest that to have been the case, that submission is incorrect (RS [32]-[33]; Reply [19]).

*Identification of the acts of sexual exploitation*

6. Section 50 does not require the acts of sexual exploitation to be particularised other than as to the period of the acts and the conduct constituting the acts: *Hamra v The Queen* (2017) 347 ALR 586 at [27].
7. To insist, in effect, that the trial court must be held to the prosecution evidence of timing and location (AS [57]) would be to undermine the position established unequivocally by this Court in *Hamra*. There is nothing to stop a finder of fact reasoning to a conclusion that a complainant was mistaken on, for example, matters of timing, as long as it is satisfied beyond reasonable doubt that the acts were committed.
- 10 8. Reasons must be considered in their entirety, having regard to all of the circumstances of the case (RS [25]).
9. The trial judge approached the Reasons methodically (RS [26]):
  - 9.1. The statement at [6] (AB 345) is correct. It is not an exhaustive statement of what is required.
  - 9.2. His Honour then summarised the charge (Reasons [7] AB 345). As to this summary:
    - 9.2.1. the penultimate sentence does not signal that he was not satisfied of one or other type of act alleged (cf Reply [12]);
    - 9.2.2. the act of showing MGF pornography was, at law, an act of sexual exploitation (*R v M, BJ* (2011) 110 SASR 1 at [8]; s 58 *Criminal Law Consolidation Act 1935* (SA)); cf AS [67] fn 39, Reply [13]).
  - 9.3. His Honour summarised, accurately, the complainant's evidence of the acts (Reasons [17]-[25] AB 347-348; [45]-[46] AB 352); (RS 26).
10. His Honour then addressed various matters arising on the evidence, and in particular those matters raised against the credibility and reliability of the complainant (Reasons [28]-[50] AB 349-352). He then addressed the other prosecution evidence (Reasons [52]-[55] AB 352-353).
11. His Honour then addressed the defence case and the contests thereby raised at trial (Reasons [56]-[59] AB 353).
12. It is against the background of that contest, that his Honour then commenced his analysis.  
30 To that end, he first elaborated on the main criticisms raised against the complainant, concluding in particular that some of MGF's evidence about the timing of events was inaccurate (Reasons [61]-[63] AB 354).

13. His Honour then addressed the presentation of the complainant, in favourable terms (Reasons [64]-[65] AB 354).

14. His Honour then accepted the complainant as a reliable witness as to the "core allegations" (Reasons [66] AB 355). Against the preceding assessment of the evidence, the only available conclusion is that this is a wholesale description of the acts of sexual exploitation alleged (and identified earlier in the reasons). The description is unqualified as to what is accepted; [61] and [66] of the reasons identify that which is not accepted. The reasons offer no other misgivings. This conclusion is supported by the statements at [65] AB 354 (RS 29).

10 15. His Honour then considered the appellant's evidence, of which he was highly critical, notwithstanding the difficulties faced by the appellant at trial (Reasons [69]-[72] AB 355-356).

16. On the basis of all of the evidence, his Honour then made findings of guilt (Reasons [74]-[75] AB 356). Nothing is left unclear.

*Failure to explain the process of reasoning or identify the "true issue"*

17. The Reasons in their entirety, and at [58] in particular, demonstrate that the trial judge did not treat the trial as a mere contest of credit between complainant and accused.

18. The issues of the timing of the construction of shed 2 and the slot car track, the location of the computer and the timing of the visit to the Adelaide unit were capable of going to the question of whether the acts were proved beyond reasonable doubt. However, they were also capable of being resolved by concluding, on all of the evidence, that those issues did not give rise to a reasonable doubt that the acts were committed. That is what the trial judge did, specifically at Reasons [46], [50] AB 352, [61] AB 354 and [64]-[67] AB 354-355.

19. The treatment of those issues by the Court of Criminal Appeal was orthodox and correct:

19.1. as to the timing of the shed construction, at [72]-[75] AB 386, [138] AB 398;

19.2. as to the visit to the Adelaide unit, at [82]-[84] AB 387-388, [140] AB 398;

19.3. as to the location of the computer, at [79]-[81] AB 387, [139] AB 398.

20. The appeal should be dismissed.

Dated: 15 February 2018

  
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CD Bleby SC