

GAX v THE QUEEN (B72/2016)

Court appealed from: Queensland Court of Appeal
[2016] QCA 189

Date of judgment: 22 July 2016

Special leave granted: 16 December 2016

On 8 February 2016 the Appellant was convicted (“the conviction count”) of the indecent treatment of his then 12 year old daughter in July 2003. He was also acquitted of two related counts of indecent treatment of the same complainant. With respect to the conviction count, the Complainant gave evidence that she awoke in her bed and found that, not only was the Appellant in bed with her, but that his hands were near where her underpants were supposed to be. She further said that the Appellant was in her bed for about five minutes before her mother unexpectedly came into her room. The Appellant contended that none of the events, the subject of any of the counts, ever occurred. The Appellant was then sentenced by Judge Smith to 12 months imprisonment, a sentence which was suspended after 5 months.

The Appellant appealed against his conviction on two grounds. The first was that the verdict was unreasonable and could not be supported by the evidence. The second was that the guilty verdict was inconsistent with the not guilty verdicts on the other counts.

On 22 July 2017 the Queensland Court of Appeal (Morrison JA & Atkinson J; McMurdo P dissenting) dismissed the Appellant’s appeal. The majority held that the Complainant’s evidence was supported in important ways by both her mother and her sister. They further held that the relatively minor inconsistencies in the witnesses’ evidence suggested not only an absence of collusion, but that they were all describing the same event. The majority further held that the relative strength of the evidence on the conviction count provided a rational basis for a conviction on that count but not the other two counts. The verdict therefore should not be set aside on the ground that it was unreasonable, nor could it be said that it was unsupported by the evidence.

President McMurdo however would have allowed the appeal. Her Honour found that the inconsistencies in the witnesses’ evidence, the 10 year passage of time until the making of the complaint and the Complainant’s admittedly own poor memory meant that a jury could not be satisfied beyond reasonable doubt as to the Appellant’s guilt.

The grounds of appeal are:

- The majority of the Court of Appeal failed to make an independent assessment of the sufficiency and quality of the evidence in determining the reasonableness of the verdict of guilty.
- The majority of the Court of Appeal erred in not concluding that the verdict was unreasonable.