



HIGH COURT OF AUSTRALIA

9 May 2018

JOHN COLLINS v THE QUEEN
[2018] HCA 18

Today the High Court unanimously allowed an appeal from the Court of Appeal of the Supreme Court of Queensland.

The appellant was convicted of a number of sexual offences, including rape, against the same complainant. It was the defence case that the complainant had become disinhibited by alcohol and that she had engaged in consensual sexual conduct, including sexual intercourse with the appellant. The complainant's mother ("Ms M") gave evidence of the terms of her daughter's complaint made in a telephone call after the incident. At the trial, in 2014, in evidence in chief, Ms M stated "[the complainant] phoned me to tell me that she had been raped". In cross-examination, Ms M agreed that at the committal hearing, which took place in 2007, Ms M said that the complainant told her "I think I've been raped" and "I had some wine and I felt funny and I don't remember every – anything after a certain time". Ms M accepted that her evidence in 2007 was the best recollection she was able to give to the Court of what the complainant had said. She also accepted that her memory in 2007 was better than her memory at the trial in 2014. The jury was instructed that the use that it could make of Ms M's 2007 account was in assessing the credibility and reliability of Ms M's evidence at the trial, but that the 2007 account was not evidence that the complainant said those things to Ms M.

The appellant appealed against his convictions to the Court of Appeal of the Supreme Court of Queensland. The Court of Appeal found that the trial judge had misdirected the jury: Ms M had adopted the 2007 account and it was open to the jury to assess the credibility and reliability of the complainant's evidence against the 2007 account. Despite this misdirection, the Court of Appeal dismissed the appeal under the proviso to the common form criminal appeal provision, because it determined that no substantial miscarriage of justice had actually occurred. Their Honours took this course notwithstanding that the prosecutor had conceded on the hearing of the appeal that "if the appellant's argument was accepted, it could not be submitted that there had been no substantial miscarriage of justice". Also, the Court of Appeal had not put the appellant on notice that notwithstanding the prosecutor's concession, it was disposed to dismiss the appeal under the proviso.

By grant of special leave, the appellant appealed to the High Court on the ground that the Court of Appeal erred in dismissing his appeal under the proviso without notice. The respondent filed a notice of contention, submitting that the Court of Appeal erred in finding that the jury had been misdirected. The High Court unanimously rejected the respondent's contention. The Court found that the Court of Appeal was in error in failing to give the appellant an opportunity to be heard on the question of dismissal under the proviso. The High Court considered for itself whether notwithstanding the misdirection no substantial miscarriage of justice actually occurred. The Court held that Ms M's 2007 account had the capacity, if accepted, to affect the jury's assessment of the credibility and reliability of the complainant's account. In the circumstances, the High Court held it was not open to find that no substantial miscarriage of justice actually occurred. The appellant's convictions and sentences were quashed, and a new trial ordered.

- *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.*