



## HIGH COURT OF AUSTRALIA

17 October 2018

### IAN DOUGLAS JOHNSON v THE QUEEN [2018] HCA 48

Today the High Court unanimously dismissed an appeal from the Court of Criminal Appeal of the Supreme Court of South Australia, which had dismissed the appellant's appeal against three convictions for sexual offences.

At a trial before a jury, the appellant was convicted of five counts of historical sexual offences against the complainant, his sister. Count one charged an indecent assault that occurred when the appellant was aged 11 or 12 and hence presumed to be *doli incapax*. Count two charged an offence of carnal knowledge that occurred when he was aged 17. The other counts charged offences that occurred when he was an adult and comprised a count of persistent sexual exploitation and two counts of rape. At trial, to rebut the presumption of *doli incapax* and to show the relationship between the appellant and the complainant, the Crown relied upon evidence from the complainant of the appellant's other alleged sexual misconduct against her, including an incident referred to as "the bath incident" that allegedly occurred when the appellant was aged around six, and two later incidents that allegedly occurred before the first offence. The District Court of South Australia had earlier dismissed the appellant's applications to have counts one and two tried separately and to prevent the Crown from leading certain discreditable conduct evidence, including evidence of these alleged incidents.

The appellant appealed against his convictions. The Court of Criminal Appeal quashed the verdicts on counts one and three and substituted verdicts of acquittal on those counts but rejected the contention that the joinder of those counts had occasioned a miscarriage of justice in the trial of the remaining counts. Evidence adduced in relation to counts one and three was admissible on the trial of each remaining count as context evidence of the appellant's relationship with the complainant.

By grant of special leave, the appellant appealed to the High Court. The High Court unanimously found that the whole of the evidence of the appellant's other alleged sexual misconduct against the complainant (except evidence of the bath incident) was admissible on the trial of each of the remaining counts: that evidence was relevant to understanding the highly dysfunctional family in which the complainant and appellant were raised. Without understanding this background, the complainant's evidence of the offences charged in the remaining counts was likely to have presented as implausible. The probative value of this evidence substantially outweighed any prejudicial effect on the appellant. While evidence of the bath incident should not have been adduced, its wrongful admission did not lead to a miscarriage of justice: the trial judge gave the jury directions that were apt to neutralise any suggestion that the bath incident cast light on the relationship between the appellant and the complainant, and evidence of the incident was almost certainly subsumed by evidence of the appellant's sexualised childhood misconduct. The judge correctly directed the jury about the limited permitted use of the evidence of the other sexual misconduct to the consideration of each of the remaining counts. There was no basis for inferring that the jury failed to act on those directions. For these reasons, the Court dismissed the appeal.

*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.*