

DOUGLASS v THE QUEEN (A17/2012)

Court appealed from: Court of Criminal Appeal of the Supreme
Court of South Australia [2011] SASCFC 6

Date of judgment: 4 February 2011

Date special leave granted: 11 May 2012

The appellant was found guilty by a District Court Judge of one count of aggravated indecent assault. The victim was the appellant's granddaughter, who was 3 years old at the time of the offence. The Crown's only evidence of guilt was a video interview with the victim conducted by a psychologist, which was admitted at trial. The appellant gave evidence and denied the incident had occurred.

In his appeal to the Court of Criminal Appeal (Doyle CJ, Anderson and David JJ), the appellant relied on two grounds: that the verdict was unsafe and unsatisfactory; and the judge failed to give adequate reasons for rejecting the appellant's evidence. On the second ground, the Court considered that, after a trial by judge alone, the judge should state his or her findings on the main grounds upon which the verdict rested, and usually would need to give reasons for making those findings, but it was not necessary for the judge to make reasoned findings on every disputed matter in the case, nor on every legal issue that arose. When a finding or the resolution of a case turned on credibility, it may be enough for the judge to say that the judge believed one witness in preference to another.

In this case, the Judge did not explain how and why he came to the conclusion that he could and should reject the denials by the appellant, and make a finding of guilt beyond reasonable doubt. However, the Court thought the explanation was obvious. Having considered the evidence as a whole, and being satisfied of the truth and reliability of the victim's evidence, the Judge necessarily rejected the denials by the appellant. It was therefore not necessary for the Judge to spell out why he rejected the appellant's denials. Indeed, there was little he could say other than that because he accepted and acted on the evidence of the victim, he necessarily rejected the evidence of the appellant. This was not a case in which the failure to explain why the Judge rejected the evidence of the appellant left the court of appeal unable properly to consider the appeal. There could be no doubt about how and why the Judge rejected the defence case.

In relation to the first ground, the Court rejected the contention that, because there was no inherent flaw in the evidence of the appellant, and because there was nothing in his demeanour that assisted the prosecution, the Judge could not, having considered the evidence on both sides, accept the victim's evidence and make a finding of guilt beyond reasonable doubt. The Court considered that there was evidence that the Judge was entitled to accept and to rely upon, to reach a finding of guilt beyond reasonable doubt. The evidence did not suffer from weaknesses that meant that the judge should have had a reasonable doubt.

The grounds of appeal include:

- The Court of Criminal Appeal erred in holding that, in the absence of an adverse finding in relation to the appellant's sworn evidence, the trial judge must have rejected his evidence and rejected it beyond reasonable doubt.
- The Court of Criminal Appeal erred in failing to find that the verdict of guilty was unsafe in that it erred in considering that this was a case of "word against word".