

## **BCM v. THE QUEEN (B31/2013)**

Court appealed from: Court of Appeal of the Supreme Court of Queensland  
[2012] QCA 333

Date of judgment: 4 December 2012

Date of grant of special leave: 6 June 2013

This appeal raises two associated questions - whether the Court of Appeal gave inadequate reasons and failed to make an independent assessment of the whole of the evidence to determine whether the verdicts of guilty on two counts of unlawfully and indecently dealing with a child under the appellant's care were unreasonable.

The appellant was convicted on two counts of unlawfully and indecently dealing with a child (E) who was under 12 years of age and in his care. Each charge nominated, as the time of commission of the offence, "a date unknown between 30 September 2008 and 1 December 2008". The jury could not agree on a verdict in relation to a third count, which was in similar terms. The appellant was imprisoned for 12 months suspended after six months for an operational period of two years.

The appellant appealed. The grounds of appeal were that the verdicts were unsafe and unsatisfactory, and that a miscarriage of justice resulted from the trial Judge's failure to direct the jury that before they could convict the appellant, they needed to be satisfied beyond reasonable doubt that the offences occurred either "within days of the appellant's surprise birthday party" or "within the date span particularized in the indictment".

The Court of Appeal (de Jersey CJ, Muir & White JJA) found that the instructions given by the trial Judge, which included his Honour's express direction to the jury that to convict they must be satisfied beyond reasonable doubt that the respective offences occurred during the period particularized in the charge, were adequate.

In relation to the reasonableness of the verdicts of guilty, the Court noted that counsel for the appellant had submitted that the verdicts of guilty and the jury's inability to agree in respect of count three were "inconsistent and irreconcilable". The Court however found that there was a rational explanation why the jury were unable to reach unanimity on count three notwithstanding the verdicts of guilty on the other counts. That was the fact that the victim had delayed for a further year before raising the allegations involved in the third count with her mother, where on E's account, all three incidents had occurred within the same comparatively short time period. The explanation for that delay was that the victim was scared and that she was embarrassed about responding inappropriately during the incident – which jurors may have accepted as believable, so that although they found her evidence on count three unreliable, that may not have caused them to doubt her credibility overall. In conclusion, the Court held that this was a case where the jury, alive to the competing considerations, were entitled, reasonably to accept the evidence for the prosecution and convict.

The grounds of appeal are:

- The Court of Appeal erred by failing to adequately assess the evidence and give sufficient reasons for the conclusion that the verdicts were not unreasonable or not unsupported by the evidence;
- The Court of Appeal erred by concluding that the verdicts were not unreasonable or not unsupported by the evidence.