



HIGH COURT OF AUSTRALIA

11 September 2012

RAYMOND HOWARD LYLE DOUGLASS v THE QUEEN

[2012] HCA 34

On 16 August 2012, the High Court allowed an appeal by the appellant against his conviction for the aggravated indecent assault of his granddaughter, CD, and directed that his conviction be quashed and a verdict of acquittal be entered. Today the High Court published its reasons for allowing the appeal.

The appellant was alleged to have persuaded CD to hold his penis on an occasion when the two were alone in a shed. CD was aged three years at the time of the alleged offence. The appellant was tried by a judge without a jury in the District Court of South Australia. The only evidence of the offence came from CD in unsworn statements made by her in an interview with a psychologist which took place a few weeks after CD's fourth birthday. The limited detail of CD's allegation in the interview was given in response to leading questions and only after she had failed to recall the incident on three occasions. Subsequently, CD had given inconsistent accounts of the scene of the alleged offence. It was also at least possible that CD could not recall the day of the alleged offence by the time she gave evidence 22 months later. The appellant gave sworn evidence denying the allegation against him. He was convicted and sentenced to three years' imprisonment with a non-parole period of 18 months.

The appellant appealed to the Court of Criminal Appeal of the Supreme Court of South Australia on two grounds. The first ground of appeal was that the trial judge had failed to give sufficient reasons for the verdict. The appellant complained that the judge had arrived at a conclusion of guilt without rejecting his sworn denial of the offence. The second ground of appeal was that CD's evidence was insufficient to establish proof of the offence beyond reasonable doubt. The appeal was dismissed.

In the High Court, the appellant was successful on both grounds. On the first ground, the Court found that the trial judge's failure to record any finding respecting the appellant's evidence left as one possibility that the judge simply preferred CD's evidence and convicted upon it applying less than the standard of proof beyond reasonable doubt. The absence of reasons sufficient to exclude that possibility constituted legal error.

On the second ground, the High Court observed that the trial judge's finding was of satisfaction beyond reasonable doubt of the *truthfulness* of CD's evidence and that he had not addressed the distinct question of the *reliability* of CD's evidence to establish the commission of the offence beyond reasonable doubt. The problems with CD's evidence meant that it was not sufficient to support a conclusion beyond reasonable doubt that the offence that the appellant was charged with had occurred. Success on the second ground required that the appellant's conviction be quashed and a verdict of acquittal be entered.

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- *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.*