



HIGH COURT OF AUSTRALIA

28 March 2012

BBH v THE QUEEN

[2012] HCA 9

Today the High Court unanimously granted BBH an extension of time to apply for special leave to appeal against his conviction, and also granted special leave, but a majority of the Court dismissed his appeal. The majority held that certain evidence admitted in proof of the applicant's propensity to commit sexual offences against his daughter was relevant and admissible.

The applicant was charged with committing certain sexual offences against his daughter. Over the objection of the applicant's counsel, the complainant's brother, W, gave evidence at the applicant's trial of an uncharged incident involving the applicant and complainant. W testified that he had observed an interaction between the complainant and the applicant where the complainant was bent over and unclothed from the waist down, and the applicant had his hand on her waist and his face near her bottom. During cross-examination, W accepted that the incident may have had an innocent explanation, such as that the applicant may have been looking for an ant bite or a bee sting. The complainant testified that she could not remember the incident and the applicant denied that it occurred.

On 17 May 2007, a jury convicted the applicant of one count of maintaining an unlawful sexual relationship with a child under 16 years of age, four counts of indecent dealing with a child under 16 years of age and four counts of sodomy of a person under 18 years of age. He was sentenced in the District Court of Queensland to 10 years' imprisonment for each count, to be served concurrently. The applicant appealed against his conviction to the Court of Appeal of the Supreme Court of Queensland. He argued, among other things, that the trial judge had erred in allowing W's evidence to be put to the jury and that the directions given to the jury were inadequate to avoid undue prejudice to the applicant. The Court of Appeal dismissed the appeal.

A majority of the High Court dismissed the appeal. Their Honours held that W's testimony was relevant because it demonstrated the applicant's sexual interest in the complainant. The majority also considered that W's testimony satisfied the *Pfennig v The Queen* (1995) 182 CLR 461 test for the admissibility of propensity evidence. That is, their Honours held that, when viewed in the context of the prosecution's case, there was no rational explanation for the incident consistent with the applicant's innocence.

- *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.*