



HIGH COURT OF AUSTRALIA

21 June 2017

GAX v THE QUEEN

[2017] HCA 25

Today the High Court unanimously allowed an appeal from the Court of Appeal of the Supreme Court of Queensland.

The appellant was tried by jury in the District Court of Queensland on an indictment containing three counts. He was convicted of count three, which charged aggravated indecent dealing with a child, his lineal descendant, and was acquitted of counts one and two, which charged aggravated acts of indecent dealing with the same child. The amended particulars of count three alleged that the appellant touched the complainant on or near her vagina. The complainant, her sister and her mother each gave evidence that the appellant was in bed with the complainant on the occasion charged in count three. The complainant stated, when giving evidence of the incident, that she "was asleep before and ended up finding out what happened".

The appellant appealed against his conviction to the Court of Appeal, contending the verdict was unreasonable and that it was inconsistent with the not guilty verdicts on counts one and two. Atkinson J, with whom Morrison JA agreed, reviewed the evidence in support of count three in addressing the inconsistent verdicts argument. Her Honour held that the quality of evidence given on count three, and the support given to it by the mother's and sister's evidence, provided a rational basis for a jury to convict on count three while acquitting on counts one and two. Her Honour held that those matters also showed that the guilty verdict was not unreasonable. The appeal was dismissed. McMurdo P, in dissent, would have allowed the appeal. Her Honour held that the evidence did not suffice to prove beyond reasonable doubt that the appellant had indecently touched the complainant.

By grant of special leave, the appellant appealed to the High Court. The Court held that it had not been open to the jury to draw an inference beyond reasonable doubt that there had been indecent touching of the complainant as charged by count three. The real possibility that the complainant's evidence was a reconstruction and not an actual memory could not be excluded beyond reasonable doubt. The Court allowed the appeal, set aside the conviction and entered a verdict of acquittal.

- *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.*