



## HIGH COURT OF AUSTRALIA

27 November 2013

### BCM v THE QUEEN

[2013] HCA 48

Today the High Court unanimously dismissed an appeal from a decision of the Court of Appeal of the Supreme Court of Queensland which upheld the conviction of BCM (the appellant) on two counts of unlawfully and indecently dealing with a child under 12 years who was for the time being under the appellant's care, contrary to s 210 of the *Criminal Code* (Q).

The complainant, E, was six years old at the date of the offences. Her stepfather was the appellant's stepson. Three offences were alleged to have occurred on the one occasion when E was staying overnight at the appellant's home. When she was nine years old, E complained to her mother that during that stay the appellant had, on two occasions, put his hand underneath her underpants. These incidents formed the basis of the first two counts of indecently dealing with E. Eleven months after first telling her mother about the first two incidents, E complained of a third incident which was said to have occurred during the same stay at the appellant's house. This incident formed the basis of the third count of indecently dealing with E.

The appellant was convicted of the first two counts after a trial by jury in the District Court of Queensland. The jury was unable to reach a verdict with respect to the third count. There were some inconsistencies between the various statements and cross-examinations of E. At the time of the trial E was 10 years old.

The appellant appealed to the Court of Appeal on the ground that the verdicts reached by the jury were unreasonable, or could not be supported having regard to the evidence. The Court of Appeal dismissed the appeal.

By special leave, the appellant appealed to the High Court. He argued that the Court of Appeal failed to assess the evidence given at trial and did not give adequate reasons for its conclusion that the verdicts were supported by evidence.

The High Court unanimously dismissed the appeal. The Court held that the Court of Appeal's reasons did not sufficiently disclose its assessment of the capacity of the evidence to support the verdict against the appellant. The High Court undertook its own assessment of the whole of the evidence before the jury and held that the verdicts were not unreasonable or unsupported by the evidence. Any inconsistencies in E's evidence were to be considered in light of her age at the date of the offences and the intervals between the offending, her first interview with police and her evidence. The High Court held that the Court of Appeal was correct to treat as believable E's explanation that she was scared and embarrassed as the reason for her delay in coming forward about the third incident. None of the criticisms of E's evidence put by the appellant led to a conclusion that it was not open to the jury to convict him.

- *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.*