



Summary of Judgment

JOHN FRANCIS TYRRELL v THE QUEEN

[2019] VSCA 52

15 March 2019

The Court of Appeal (Justice Kaye, Justice Niall and Justice Weinberg) today allowed an appeal by John Francis Tyrrell against his conviction on four charges of buggery, and six charges of indecent assault.

Those offences were alleged to have been committed by the appellant in 1965 and 1966, while he was a teacher at St Joseph's College, Geelong. The complainant was a student of the College, who was then aged between 10 and 12. The appellant had been charged with four other charges of offending against the same complainant, but he was acquitted by the same jury of those charges.

The complainant first spoke to the police about the matters that were the subject of the charges in September 2014. He had never previously mentioned them to anyone else. There were a number of substantial inconsistencies between the account that he gave to the police, and the evidence that he gave at the trial. In addition, there were serious discrepancies between his version of events, and the facts that were objectively established by the evidence. For example, the complainant initially told police that the offending occurred between 1965 and 1968, extending continuously over that entire period. He said that it had only concluded when he confronted the appellant directly at the school in early 1969. However, it was clearly established that the appellant had ceased to teach at the school at the end of 1966. Accordingly, the complainant's account was totally at odds, in that regard, with the objective evidence. There were a number of other material inconsistencies in the complainant's evidence, and there were also significant aspects of it which were improbable.

In addition, by reason of the delay of more than 50 years in this matter being brought to trial, several relevant witnesses were no longer available to give evidence. One of those witnesses in particular would have been in a position to give critical evidence in respect of several factual issues that were in contention.

Having carefully reviewed the evidence in the trial, the Court of Appeal concluded that in light of the many inconsistencies in the complainant's account, and the improbabilities associated with his evidence, it had not been open to the jury to be satisfied, beyond reasonable doubt, of the guilt of the appellant. In reaching that conclusion, the Court applied the test, specified by the High Court, that an intermediate appellate court, faced with a ground challenging a conviction as being unsafe, must conduct its own independent review of the evidence that was before the jury. If the appellate court concluded that there was a reasonable doubt about the appellant's guilt, it must set aside the guilty verdicts, unless that doubt could be resolved by having regard to the advantage of the jury in hearing and seeing the witnesses give evidence.

In the present case, the Court of Appeal concluded that the advantage so enjoyed by the jury was not capable of resolving the substantial doubt held by the Court as to the proof of the

guilt of the appellant on the charges on which he was convicted. Accordingly, the Court ordered that there be a judgment and verdict of acquittal.

NOTE: This summary is necessarily incomplete. It is not intended as a substitute for the Court's reasons or to be used in any later consideration of the Court's reasons. The only authoritative pronouncement of the Court's reasons and conclusions is that contained in the published reasons for judgment.