



Summary of Judgment

BRADLEY DICKINS v THE QUEEN

[2019] VSCA 284

5 December 2019

In May 2018, a jury convicted Bradley Dickins on one charge of committing an indecent act in the presence of a child under 16 years and one charge of sexual penetration of a child under 16 years. The Court of Appeal (Justice Kaye, Justice McLeish and Justice Ashley) today allowed his appeal, and ordered that the convictions on both charges be set aside and verdicts of not guilty be entered on the record instead.

It was alleged that Mr Dickins committed the offences in July 2012 against the complainant, who was then ten years of age and suffered from an intellectual disability and a language impairment. Mr Dickins, a close friend of the complainant's parents, frequently looked after the complainant. The complainant alleged that he had visited Mr Dickins at his home in July 2012, during the course of which Mr Dickins showed him a condom and placed it on his own penis. It was further alleged that Mr Dickins then sexually penetrated the complainant. The complainant did not tell his parents about the alleged offending and continued to visit Mr Dickins regularly until September 2015.

In September 2015, in a highly emotional setting, the complainant's uncle revealed to him that he himself had been sexually assaulted by Mr Dickins.¹ The complainant's uncle then raised his suspicion that the complainant had also been sexually assaulted by Mr Dickins, and explained what he meant by penetration. In response to his uncle's questioning, the complainant confirmed that he too had been sexually assaulted by Mr Dickins. The matter was then reported to the police.

The case of the prosecution was almost entirely dependent on the evidence of the complainant. At the forefront of Mr Dickins' defence at trial, was the proposition that due to the complainant's age, his disability and his close relationship with his uncle, he was susceptible to the concern raised with him by his uncle that the offending had taken place. The critical question on appeal was whether the jury, acting reasonably, could have properly excluded the hypothesis that the complainant's memory was a product of the concern expressed to him by his uncle that Mr Dickins had sexually penetrated him.

The Court found that due to a combination of factors the jury could not reasonably have been satisfied beyond reasonable doubt of Mr Dickins' guilt. The main factors raising doubt about the reliability of the complainant's account were:

¹ The complainant's uncle has not reported the alleged sexual assault to the police.

- The circumstances in which the complainant first disclosed the alleged offending to his uncle raised a real possibility that he was responding to a suggestion, to which he later felt committed, rather than recalling actual events.
- The complainant's evidence was in material respects internally inconsistent. His account of the alleged events was fragmented. Further, his account was not sequential and quite disjointed. He stated several times that he did not remember important aspects of the events.
- The complainant continued to visit Mr Dickins and gave evidence that he enjoyed these visits, as there were plenty of interesting things for him to do and he did not have the offending in mind at the time.

The Court held that:

... in the circumstances that we have outlined, we consider that there is a reasonable possibility, which could not be rationally excluded, that when [the complainant] gave his account of the events ... he was then recounting a version that had evolved and developed in his mind as a result of the conversation with his uncle ... rather than the content of a recollection of an event that truly occurred.²

Accordingly, the application for leave to appeal against conviction was granted, and the appeal allowed. The convictions of Mr Dickins on both charges were set aside, and in their place verdicts of not guilty were entered on the record.

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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.

² *Dickins v The Queen* [2019] VSCA 284, [83].