Pickett v The Queen [2013] NTCCA 19

PARTIES:	PICKETT, Peter Noel
	v
	THE QUEEN
TITLE OF COURT:	COURT OF CRIMINAL APPEAL NORTHERN TERRITORY
JURISDICTION:	CRIMINAL APPEAL FROM SUPREME COURT EXERCISING TERRITORY JURISDICTION
FILE NO:	CA 19 of 2013
DELIVERED:	30 DECEMBER 2013
HEARING DATES:	4 NOVEMBER 2013
JUDGMENT OF:	Riley CJ, Kelly and Blokland JJ
APPEAL FROM:	Barr J and a Jury of 12 in Proceedings No 21114775

CATCHWORDS:

EVIDENCE—Complaint evidence—Historical indecent assault on child—Whether complaint was extracted or induced—Held that complaint must be seen in context—Evidence admissible—Appeal dismissed

EVIDENCE—Complaint evidence—Historical indecent assault on child—Whether evidence unreliable—Inconsistent prior statements made by witness—Held that issues properly dealt with by way of jury directions and warning—Evidence admissible—Appeal dismissed

CRIMINAL LAW—Jury verdict—Appeal—Whether unreasonable with regard to evidence—Historic indecent assault on child—Inconsistent and allegedly unreliable evidence—Jury returned mixed verdicts across multiple counts—Held that jury verdicts reflect close scrutiny and careful consideration by jury—No reasonable doubt entertained—Appeal dismissed

REPRESENTATION:

Counsel:

Appellant:	M Thomas
Respondent:	P Usher

Solicitors:

Appellant:	North Australian Aboriginal Justice Agency
Respondent:	Office of the Director of Public Prosecutions

Judgment category classification:	B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Pickett v The Queen [2013] NTCCA 19
No CA 19 of 2013

BETWEEN:

PETER NOEL PICKETT
Appellant

AND:

THE QUEEN
Respondent

CORAM: Riley CJ, Kelly and Blokland JJ

REASONS FOR JUDGMENT

(Delivered 30 December 2013)

The Court:

Introduction

[1] In March 2013, the appellant pleaded not guilty to 11 counts charged on indictment. Of those 11 counts, nine were for offences of indecent assault, one for assault and one for attempted unlawful carnal knowledge. The complainant in each case was ND. The charges all related to conduct said to have occurred over 30 years ago, between 1 July 1980 and 30 June 1983 when ND, (the daughter of the appellant's then partner), was a small child.

[2] The 11 counts arose out of six alleged separate incidents.

[3] On 28 March 2013, a jury found the appellant guilty of counts 1 and 2, (charges relating to part of the "first incident"), and guilty of counts 8 to 10, (charges relating to part of the "sixth incident"). The appellant was found not guilty of count 4, (the charge relating to the "second incident"). The trial judge directed the jury to enter verdicts of not guilty in relation to the balance of the charges save for count 7, (relating to the "fifth incident") for which the jury were unable to reach a verdict.

[4] It is convenient to set out the particulars of each count, incident and the corresponding verdicts in the following table:

COUNT **(and related "incident")**	**OFFENCE**	**RESULT**
1 "incident 1"	Between 1 July 1980 and 30 June 1983 indecently assaulted ND, a girl, contrary to section 66 of the *Criminal Law and Consolidation Act and Ordinance* (NT).	Guilty verdict.
2 "incident 1"	Between 1 July 1980 and 30 June 1983 indecently assaulted ND, a girl, contrary to section 66 of the *Criminal Law and Consolidation Act and Ordinance* (NT).	Guilty verdict.
3 "incident 1"	Between 1 July 1980 and 30 June 1983 indecently assaulted ND, a girl, contrary to section 66 of the *Criminal Law and Consolidation Act and Ordinance* (NT).	Verdict of not guilty by direction.
4 "incident 2"	Between 1 July 1980 and 30 June 1983 assaulted ND, a girl, contrary to section 48 of the *Criminal Law and Consolidation Act and Ordinance* (NT).	Verdict of not guilty.

5 "incident 3"	Between 1 July 1980 and 30 June 1983 indecently assaulted ND, a girl, contrary to section 66 of the *Criminal Law and Consolidation Act and Ordinance* (NT).	Verdict of not guilty by direction.
6 "incident 4"	Between 1 July 1980 and 30 June 1983 indecently assaulted ND, a girl, contrary to section 66 of the *Criminal Law and Consolidation Act and Ordinance* (NT).	Verdict of not guilty by direction.
7 "incident 5"	Between 1 July 1980 and 30 June 1983 indecently assaulted ND, a girl, contrary to section 66 of the *Criminal Law and Consolidation Act and Ordinance* (NT).	Jury unable to reach a decision and discharged on this count. A *nolle prosequi* filed in respect of this count on 18 April 2013.
8 "incident 6"	Between 1 July 1980 and 30 June 1983 indecently assaulted ND, a girl, contrary to section 66 of the *Criminal Law and Consolidation Act and Ordinance* (NT).	Verdict of guilty.
9 "incident 6"	Between 1 July 1980 and 30 June 1983 assaulted ND, a girl, contrary to section 48 of the *Criminal Law and Consolidation Act and Ordinance* (NT).	Verdict of guilty.
10 "incident 6"	Between 1 July 1980 and 30 June 1983 attempted to unlawfully and carnally know and abuse ND, a girl, contrary to section 66 of the *Criminal Law and Consolidation Act and Ordinance* (NT).	Verdict of guilty.
11 "incident 6"	Between 1 July 1980 and 30 June 1983 indecently assaulted ND, a girl, contrary to section 66 of the *Criminal Law and Consolidation Act and Ordinance* (NT).	Verdict of not guilty by direction.

[5] The appellant appeals against the convictions, first on the ground that the mother's evidence as to complaint was wrongly admitted and second on the

ground that the verdicts are unreasonable and cannot be supported having regard to the evidence.

[6] Broadly the Crown case was that in the early 1980's the complainant (ND) and her family moved from Port Hedland, Western Australia to Darwin. At that time the family unit consisted of ND, her younger sister SE, their younger brother, the complainant's mother, (FD), and the appellant. The family moved into a house at Alawa. The offending comprising counts 1-7 was alleged to have occurred in that house. The offending constituting the remaining counts was alleged to have occurred on an oval at Alawa near the family home.

[7] The particulars of the offending for count 1, (indecent assault), were that at the house in Alawa, while ND's mother was absent from the home, the appellant took the complainant from her room to the room he shared with her mother. There he pulled her underwear aside, put his finger or fingers into her vagina and licked her vagina. The offending behaviour constituting count 2 was that immediately after committing the indecent assault forming the basis of count 1, the appellant masturbated and placed the complainant's hand on his penis, forcing her hand up and down on his penis. The complainant said that she was shown a knife and that the appellant threatened her by saying that if she told anyone he would cut her up. The Crown alleged counts 1 and 2 were the first occasions of sexual misconduct by the appellant with respect to the complainant.

[8] Counts 8, (indecent assault), 9 (assault) and 10 (attempt carnal knowledge), constituted part of the sixth incident alleged by the Crown. In relation to count 8, the complainant stated that she and the appellant were walking across Alawa Oval and that while she tried to get over a fence, the appellant put his finger into her vagina. In relation to count 9 the complainant said that immediately after that act, the appellant knocked her to the ground and pulled her by the hair. The conduct forming the basis of count 10 was that the appellant then tried to insert his penis into her vagina.

[9] The Crown case relied almost exclusively on the evidence of the complainant ND. ND first approached police about the appellant's conduct approximately 30 years after the alleged offences. There were no other witnesses who saw the sexual misconduct alleged. The evidence of the complainant's mother and sister primarily went to complaint. There was no forensic or medical evidence called, nor was there evidence of school records, housing or tenancy records. In as much as these factors were pointed out on behalf of the appellant in an attempt to illustrate that the case against the appellant was not strong, it may be observed that the amount and type of evidence adduced in this trial is not unusual in historical cases of this kind. These and other factors relevant to the strength of the Crown case were dealt with at length by the trial judge in summing up to the jury.

Ground One[1] – The Complaint Evidence

[10] The first ground of appeal is that the complaint evidence of the complainant's mother, (FD) which was admitted pursuant to s 26E of the *Evidence Act* (NT), ought to have been excluded.

[11] At the conclusion of a voir dire on 19 and 20 March 2013, the learned trial judge admitted evidence of the relevant conversation between the complainant and her mother pursuant to s 26E of the *Evidence Act* (NT).

[12] Section 26E permits a statement made by a child to "another person" concerning a sexual offence or serious violence offence to be admitted as evidence of the facts in issue.[2] Section 26E requires that the evidence be of "sufficient probative value" before it is admitted. To determine whether the proposed evidence is of "sufficient probative value", the court examines all of the known surrounding circumstances.[3]

[13] FD's evidence was that on one occasion when they were living in Port Headland, (after returning from Darwin), the complainant's sister, SE told her "something". FD spoke to the complainant as a result of being told "something". Her brief evidence in chief on the point is as follows:

[1] This ground became the first ground at the hearing of the appeal, the original ground one was not pursued.
[2] This provision has been analysed previously in *MLB v The Queen* (2010) 27 NTLR 198; *R v Joyce* (2005) 15 NTLR 134; and *R v Wojtowicz* (2005) 194 FLR 186.
[3] *R v Joyce* (2005) 15 NTLR 134 at [20].

"What did you do after you were told something by [SE]?

I called out [to the complainant] to come inside.

And did she?

Yeah, she was crying.

And what did she say to you?

She said that Peter Pickett was mucking around with her.

Did she say when or explain anything else?

Yes, in the ……

Sorry, I didn't ……

Park. In the park in Alawa.

Okay, and what did you say?

I said why didn't she tell me this before, I could have got the police onto him.

And what was her answer?

She was afraid to tell me. She said that if she told anyone Peter had a knife and he'd cut her.

And do you remember anything else about this conversation?

No".

[14] FD acknowledged she did not know the date of the conversation, nor how old the complainant was at the time. She remembered however, that the

complainant was in primary school. It was an admitted fact at trial that the complainant's grandmother's funeral was shortly after the grandmother's death on 23 July 1984. On the Crown case, the conversation between FD and ND took place after that date. This was the date that the complainant's sister, SE, said that the complainant told her for the first time she had been molested by the appellant.

[15] The three matters his Honour ruled could be lead as asserted facts pursuant to s 26E *Evidence Act* (NT) were:

> (i) that the appellant was mucking around or had been mucking around with the complainant;
>
> (ii) that the appellant had a knife and threatened to cut up the complainant if she told her mother or anybody else what was happening to her; and
>
> (iii) that the appellant told her if she did not submit, he would take her sister.

[16] The appellant contended there are two reasons why FD's evidence should not be admitted; first, that it was "extracted" by FD and hence lacked the requirement of spontaneity and second, the evidence was so unreliable it did not possess the sufficient probative value required by s 26E to justify its admission; alternatively, s 137 of the *Evidence (National Uniform Legislation) Act* (NT) required exclusion of the evidence on the ground that its probative value is outweighed by the danger of unfair prejudice to the appellant.

(i) The "Extracted" Complaint

[17] In support of the argument that the complaint was extracted, the appellant's counsel relied, by way of comparison, on the approach taken and observations made in *R v Joyce*[4] in the context of permitting the admission of a complaint of a young boy after a question from his brother. There the court held there was no suggestion of leading questions or any inducement. Relying on *R v Freeman,*[5] Riley J [as he then was] said that the question asked by the brother in *Joyce* "did no more than dissolve the barrier which had hitherto prevented him from telling his story". The appellant also relied on *R v Osborne,*[6] where it is stated that "if the circumstances indicate that, but for the questioning, there probably would have been no voluntary complaint, the answer is inadmissible".

[18] The appellant argued the evidence given by SE at committal demonstrated the complaint was not voluntary, but rather, was extracted. The following portions of SE's evidence at committal were relied on:

> "So what did you say to Mum?"
>
> "Um, I said ND told me a secret and I'm telling you, cause she won't let me watch her have a cigarette and that Peter Pickett mucked around with her. And every night (inaudible) tell anyone because (inaudible)".
>
> "So what, did your mum do anything after she heard that?"

[4] (2005) 15 NTLR 134 at [62].
[5] [1980] VR 1 at 7.
[6] [1905] 1 KB 551 at 556.

> "Um, she said to go get ND and was screaming "go and get ND". So I went and ran and got ND and (inaudible) and she was crying (inaudible) what I can remember and we walked out to the house, wondering where she was looking (inaudible) I don't know where. When we got back to the house, and they made ND say what I said. And then we got a hiding over it, because I was pretty sure they thought we were lying".

[19] In relation to what SE heard, she said she was pretty sure that an "Aunty Bev" was there. She also said:

> "No, I don't remember. Just hear screaming. I can remember screaming basically, screaming at ND and that's about it. I don't remember the conversation. Yeah, basically that's what-what I think that's what happened-was they shoved me away to get her alone, because I couldn't hear and I wasn't in the same area as her, so I don't know-I'm not quite sure there".

[20] SE also said she and ND were not believed at that time; that they were told they were making it up and they got a warning for making up a "big story". She said she could not recall what they (her mother and "Aunty Bev") were saying. She said both she and ND got a hiding. She said it was a "hand hiding" and a "cord hiding". She said all she could remember was ND crying and screaming.

[21] When SE was speaking of "they", she was speaking of FD and "Aunty Bev", who was not called at trial.

[22] FD said in her statement to police that SE told her: "ND hadn't told me because she was scared I would belt her. I felt sad when she said that because I would support ND no matter what".

[23] It was submitted on behalf of the appellant that given all of those circumstances, particularly SE's evidence "they made ND say what I said", it should be concluded that ND was forced to speak regarding the secret between herself and SE. The court was asked to conclude that but for the questioning there would have been no complaint, much less a voluntary complaint, in a context of what was said to be "retribution" between the sisters. In those circumstances, and in the light of the earlier authorities, it was submitted that the relevant evidence did not possess "sufficient probative value" in terms of s 26E of the *Evidence Act* (NT).

[24] In our view the circumstances in which the complaint was made were not indicative of inducement or coercion. The complaint must be seen in its real context, in this particular family, and how such matters may be discussed or dealt with in those circumstances. The complainant and her sister were very young at the time. SE's evidence at committal as a whole indicates her recollection is vague about what transpired after she reported the matter to her mother. The statement that "they made ND say what I said" is open to interpretation and is well consistent with the complainant's mother inquiring with the complainant about what she had said to her sister. This is in turn consistent with the mother's account. That vernacular expression, as between SE and the mother forms part of the circumstances in which the complaint is made, does not in our view amount to an extracted, inadmissible complaint.

(ii) That the evidence of FD was so unreliable as not to be of sufficient probative value to justify admission pursuant to s 26E of the *Evidence Act* or, alternatively, s 137 of the *Uniform Evidence Act* would exclude it.

[25] Various criticisms are made of FD's evidence on behalf of the appellant. First is that FD recalled that both ND and SE were attending school at the time the offences occurred, whereas ND and SE disagreed; no school records were produced and the officer in charge of the investigation said there was no record of ND going to school at the time. Second, FD agreed she had consumed alcohol during this time and that her memory was vague and unclear. Third, she agreed there were a number of phrases used by her in her evidence that were not part of her committal evidence or her statement to police, or differed in some particular from the previous evidentiary material. For example, in cross-examination it was raised with her that she only remembered at trial that the "mucking around" had occurred at a park in Alawa; and that she had not said at committal that ND had said "that if she told anyone, Peter had a knife, and he'd cut her". It is submitted that these and other alleged inconsistencies, coupled with the length of time between the complaint and trial, and the failure of the Crown to call "Aunty Bev", should have lead to exclusion of her testimony in relation to the complaint.

[26] We reject this argument. FD's evidence was that having received information from her younger daughter SE, she asked ND what had happened and ND then relayed the complaint. The evidence of complaint given is reflected in FD's statement to police and her testimony at both

committal and trial. FD's evidence was brief, as was the information received by her, amounting to a suggestion of sexual interference by the appellant upon ND, expressed in a way that might be expected by a young child.

[27] The acknowledged inconsistencies should be understood in the context of the length of time between the conversation, reporting the matter to police, and the trial. Apart from the reference to the location of the offending, FD's evidence is broadly consistent with information she gave to police. In relation to the cross-examination of FD to the effect that at committal she had failed to include reference to the knife or the threat of use of the knife, the respondent was permitted to tender a portion of her police statement as evidence of a prior consistent statement. This part of her testimony could not be characterized as recent invention as appears to be alleged. This would not be a fair criticism of her evidence.

[28] We agree with the submission made on behalf of the respondent that the complaint in any event is also capable of admission pursuant to s 66(2A) of the *Evidence (National Uniform Legislation) Act* (NT), as being information that the complainant could well be expected to remember as fresh in the memory many years after the occurrence of relevant events.[7]

[29] In all of the circumstances, the short evidence given by FD about the complaint of ND does not warrant exclusion on the basis of unreliability.

[7] See *LMD v The Queen* [2012] VSCA, noting a complaint made 10 years after alleged sexual abuse was considered 'fresh' in the complainant's memory in the circumstances of that case.

The issues of inconsistency and possible problems with recall in parts of the testimony of FD, ND and SE, including the complaint evidence were more appropriately dealt with by direction. The trial judge properly instructed the jury on these issues. As a further safeguard it may be noted the trial judge included a warning in relation to the evidence of FD in summing up.

Ground 2 – That the Verdict is Unreasonable and Cannot be Supported Having Regard to the Evidence.

[30] The question which the court must ask itself is whether it thinks that upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty.[8] If upon the whole of the evidence a jury, acting reasonably, was bound to have a reasonable doubt, then the verdict of guilty must be set aside.

[31] In answering that question the court must keep in mind that the jury is the body entrusted with the primary responsibility of determining guilt or innocence, and that the jury has had the benefit of having seen and heard the witnesses.[9] The appellate court's function is confirmed in a number of authorities:

> "An appellate court must itself consider the evidence in order to determine whether it was open to the jury to convict, but the appellate court does not substitute its assessment of the significance

[8] *Gipp v The Queen* [1998] HCA 21; 194 CLR 106 per McHugh and Hayne JJ at [49] re-affirming the test laid down in *M v The Queen* [1994] HCA 63; (1994) 181 CLR 487 per Mason CJ, Deane, Dawson and Toohey JJ at [7] and affirmed in *Jones v The Queen* [1997] HCA 12; (1997) 72 ALJR 78; 149 ALR 598.
[9] *M v The Queen* per Mason CJ, Deane, Dawson and Toohey JJ at [**7**].

> and weight of the evidence for the assessment which the jury, properly appreciating its function, was entitled to make".[10]
>
> "The appellate court's function is to make its own assessment of the evidence not for the purpose of concluding whether that court entertains a doubt about the guilt of the person convicted but for the purpose of determining whether the jury, acting reasonably, must have entertained a reasonable doubt as to the guilt of the accused".[11]

[32] It is also said that a doubt experienced by an appellate court will be a doubt which a jury ought also to have experienced.[12] Where the evidence lacks credibility for reasons which are not explained by the manner in which it was given, a reasonable doubt experienced by an appellate court is a doubt which a reasonable jury ought to have experienced. If after reviewing the evidence there is a significant possibility that an innocent person has been convicted, then an appellate court is bound to act and set aside a verdict based upon that evidence.[13]

[33] We do not entertain a reasonable doubt.

[34] In general terms, the appellant argued the complainant's evidence was unreliable, was not corroborated and was reliant on her memory of events approximately 30 years ago. A question that arose over ND's reliability, related to part of her evidence with respect to the "first incident". She said that at the time of the first incident, the appellant touched her with a knife from the top of her head down to her vagina, and then across her body and

[10] *Carr v The Queen* [1988] HCA 47; (1988) 165 CLR 314 per Brennan J at 330-334, applied by Gaudron J in *Gipp v The Queen* at [18].
[11] *M v The Queen* per Brennan J at [3] citing *Knight v The Queen* [1992] HCA 56; (1992) 175 CLR 495.
[12] *M v The Queen* per Mason CJ, Deane, Dawson and Toohey JJ at p 494.
[13] *M v The Queen* at 494.

her neck. This evidence was introduced for the first time by ND at trial. The appellant suggested this may have been raised by the complainant to enhance the drama of her narrative. During summing up, his Honour told the jury they might find that this evidence represented a "false memory" situation. His Honour explained what he meant by this: "memories of things that you may honestly believe occurred but which did not occur". In our view the jury, having received proper warnings and directions, were in the best position to assess ND's reliability. It was open to the jury to find ND was truthful and reliable in relation to the counts that the jury returned guilty verdicts on. Given the circumstances of the case, the jury may well have concluded this evidence to be an honest, yet false memory. We see no reason to come to a different conclusion when the whole of the complainant's evidence is examined.

[35] Much was made in the appellant's case about the length of time taken by ND to make her statement to police, yet despite this, she continued to introduce new facts in her evidence at trial, not contained in her statement. Inconsistencies pointed out to the court involve questions of whether ND was correct when she said Detective Phipps wrote everything in her statement. It was also asserted that ND had no consistent position on this. The delay in complaint to police was said to be compounded by the fact that her memory was that of a young child. The appellant argued ND's explanations for the delay should be found to be insufficient.

[36] The appellant submitted a reasonable doubt exists given ND's overall unreliability and lack of accuracy in her evidence. The appellant pointed out that she contradicted herself in relation to the alleged period of abuse; that she was in error in relation to whether police or she wrote certain notes; that she was wrong in relation to whether she had spoken to Western Australian police; that she was wrong in terms of the time taken for police to take her sworn statement; and that she could not explain a discrepancy between her statement and evidence relevant to count 7. The appellant emphasised the different versions ND gave about how old she was at the time of the alleged offending. This varied from about 7 to 8 years, 6 or 7 years, and by reference to a note which said she was 8 or 9 years. ND agreed she did not have a memory as to how old she was at the time her family moved to Darwin and therefore at the time of the offending.

[37] In our view the jury was entitled to conclude, in the circumstances of this case, that any established inconsistencies had little or no bearing on the ability of the complainant to recollect the circumstances of sexual offending against her by the appellant when she was 6 to 8 years of age. There is no reason to conclude her memory of the actual offences was unreliable or untruthful.

[38] In relation to counts 8, 9 and 10, it is argued the complainant, in the circumstances of that incident as a whole, would have immediately run to her mother and her aunt who she had said were walking along the street at the actual time of the attempted sexual assault at Alawa Oval. The appellant

argues the explanation given by the complainant that she was scared is implausible. The jury were entitled to accept this explanation by ND as to why no immediate complaint was made. ND had stated she felt threatened by the appellant if she reported the offending. Lack of recall of specific details on the part of the complainant is stressed on behalf of the appellant; as are inconsistencies on a range of subjects between her statement to police and her evidence.

[39] The appellant points out that in relation to count 11, the Crown opened to the jury on the basis that count 11 was constituted by a finger in the complainant's anus, yet the complainant did not give that evidence, but instead said the appellant tried to put his penis into her anus. An application to amend the charge to attempt was disallowed by the trial judge who directed the jury enter a verdict of not guilty. The appellant argued this demonstrated the inherent unreliability concerning the whole of the sixth incident. We do not accept this argument. Incident six involved a number of indecencies in a short period of time. Inconsistency with respect to one part of the incident does not reflect on the other counts. The surrounding circumstances of the offending that relate to inconsistencies do not in our view undermine ND's evidence with respect to the central allegations she made. It was open to the jury to convict on counts 8, 9 and 10. The inconsistencies raised by the appellant are not in our opinion so central to the determination of guilt that the verdicts should be undermined.

[40] The complaint evidence given by SE was raised with respect to this ground. The appellant pointed out that the two cousins said to be playing with SE and ND at the time of the complaint were not called at trial. SE recalled in evidence that ND had said the appellant "molested her". She clarified in her evidence that those were the words that she (SE) was using as an adult; she could not recall the words ND used at the time. SE agreed ND did not go into detail about what happened. It is argued that compared with her police statement and other evidence, SE's evidence is so inconsistent that it should not have been relied on and lacked credibility.

[41] In our opinion it should be of no consequence that SE could not recall the precise details of a complaint she received when she was aged about 7 or 8 years. SE conceded she has, from time to time talked in general terms about the sexual offending and its effects on ND, however, this is not inconsistent with her statement that she has not spoken in detail with her. We disagree with the suggestion that SE's evidence is tarnished.

[42] The appellant submitted the verdicts of not guilty in respect of count 3, 4, 5, 6 and 11 support the case for concluding the remaining convictions are unreasonable and cannot be supported by the evidence. In our opinion the pattern of the verdicts given by the jury reflect that the jury considered each charge separately and carefully considered the evidence in respect of each charge. The jury clearly scrutinised the complainant's evidence as it was instructed to do. The jury's verdicts of guilty to counts 1 and 2 are consistent with the evidence relating to "incident one". Count 3 was the

subject of a directed verdict as the evidence given was unable to establish the “assault” ingredient of the charge of “indecent assault”. This does not undermine the verdicts of guilty given to counts 1 and 2. Similarly, the jury's verdicts of guilty to counts 8, 9 and 10 are consistent with acceptance of the evidence relating to incident six. Count 11 was subject to a directed verdict as has already been discussed, however that should not be seen to undermine the verdicts of guilty to counts 8, 9 and 10. The jury's verdict of not guilty to count 4 is consistent with the jury not being satisfied beyond reasonable doubt as to incident two. The verdicts of not guilty given by the jury in respect of some of the counts, whether after deliberation or by direction do not in our opinion form the basis to suggest that the jury should therefore have returned not guilty verdicts to counts 1, 2, 8, 9 and 10.

[43] After reviewing the evidence we conclude the verdicts should not be disturbed.

[44] The appeal is dismissed.

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