

SUPREME COURT OF QUEENSLAND

CITATION: *R v Maddison* [2017] QCA 79

PARTIES: **R**
v
MADDISON, Steven Robert
(appellant)

FILE NO/S: CA No 57 of 2016
DC No 1276 of 2015

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction

ORIGINATING COURT: District Court at Brisbane – Date of Conviction: 19 February 2016

DELIVERED ON: 2 May 2017

DELIVERED AT: Brisbane

HEARING DATE: 16 February 2017

JUDGES: Holmes CJ and Morrison JA and Bond J
Separate reasons for judgment of each member of the Court, each concurring as to the order made

ORDER: **Appeal dismissed.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – VERDICT UNREASONABLE OR INSUPPORTABLE HAVING REGARD TO EVIDENCE – where the appellant was found guilty of indecent treatment of his neighbour’s daughter – where evidence was heard from the complainant and a number of adults – where the appellant contended that there were multiple contradictions and inconsistencies in the complainant’s evidence – where the appellant also contended that there was a lack of corroborating evidence and that those factors should have led the jury to have doubt about his guilt – where the trial judge gave the jury a direction to assess the complainant’s credibility and reliability – where the appeal court is required to review all of the evidence to determine whether the jury should have had doubt about the appellant’s guilt – whether it was open to the jury to be satisfied of the appellant’s guilt beyond reasonable doubt

Evidence Act 1977 (Qld), s 21AK, s 93A

M v The Queen (1994) 181 CLR 487; [1994] HCA 63, cited
MFA v The Queen (2002) 213 CLR 606; [2002] HCA 53, cited
R v Baden-Clay (2016) 90 ALJR 1013; [2016] HCA 35, cited
SKA v The Queen (2011) 243 CLR 400; [2011] HCA 13, cited

COUNSEL: The appellant appeared on his own behalf
D Nardone for the respondent

SOLICITORS: The appellant appeared on his own behalf
Director of Public Prosecutions (Queensland) for the
respondent

- [1] **HOLMES CJ:** I agree with the reasons of Morrison JA and with the order he proposes.
- [2] **MORRISON JA:** Mr Maddison was convicted on four counts concerning a child (G) who was under 16 at the time of the offences. The counts were:
- (a) three counts of indecent treatment by: touching her on the breast area; touching her genital area over her clothing; and kissing her;
 - (b) count four - observation and breach of privacy, when he entered the bathroom and watched G in the shower.
- [3] Mr Maddison challenges his convictions on the basis that the verdicts are unreasonable or cannot be supported having regard to the evidence.

Applicable legal test

- [4] In a case where the ground is that the conviction is unreasonable or cannot be supported by having regard to the evidence, *SKA v The Queen*¹ requires that this Court perform an independent examination of the whole of the evidence to determine whether it was open to the jury to be satisfied of the guilt of the convicted person on all or any counts, beyond reasonable doubt. It is also clear that in performing that exercise the Court must have proper regard to the pre-eminent position that the jury holds as the arbiter of fact.² In *M v The Queen* the High Court held:

“In most cases a doubt experienced by an appellate court will be a doubt which a jury ought also to have experienced. It is only where a jury’s advantage in seeing and hearing the evidence is capable of resolving a doubt experienced by a court of criminal appeal that the court may conclude that no miscarriage of justice occurred. That is to say, where the evidence lacks credibility for reasons which are not explained by the manner in which it was given, a reasonable doubt experienced by the court is a doubt which a reasonable jury ought to have experienced. If the evidence, upon the record itself, contains discrepancies, displays inadequacies, is tainted or otherwise lacks probative force in such a way as to lead the court of criminal appeal to conclude that, even making full allowance for the advantages enjoyed by the jury, there is a significant possibility that an innocent person has been convicted, then the court is bound to act and to set aside a verdict based upon that evidence.”³

¹ (2011) 243 CLR 400, at [20]-[22].

² *M v The Queen* (1994) 181 CLR 487, at 493.

³ *M v The Queen* at 494.

- [5] Recently the High Court has restated the pre-eminence of the jury as arbiter of fact.⁴

The complainant's evidence

- [6] G's evidence consisted of transcripts of two police interviews, each tendered under s 93A of the *Evidence Act* 1977 (Qld). In addition, her trial evidence was pre-recorded under s 21AK of the *Evidence Act*.
- [7] G was 14 at the time of the interviews. The first interview was largely unproductive. She said that Mr Maddison lived next door to her father. When asked to say what had happened, she said that they would sometimes go over to Mr Maddison's house for barbecues, lunches or the occasional bonfire. She said that other things had happened at Mr Maddison's house, but repeatedly refused to say what, answering "I don't wanna say".⁵ She said she did not feel safe at Mr Maddison's house, but refused to say why. She said that she had told two other people, her teacher and her aunt. When asked to say what it was that she had told them, she answered the teacher knew.⁶
- [8] Eventually the interviewer at the first interview was able to draw out some further details. G said that something had happened when she was inside the house, and her father's partner (FM) was outside. It was just G and Mr Maddison in the lounge room and G sat down on the lounge.⁷ At that point, when asked about what happened, G retreated saying "I don't wanna talk about it".⁸ Nothing further was obtained at that interview.
- [9] The second interview took place about two and a half hours later. During that interview she said:
- (a) Mr Maddison kept doing it every time she went to see her father;⁹ he kept pulling her inside and doing "inappropriate things";¹⁰
 - (b) her first sleepover at her father's house occurred when she was 13, about a year before the interview;¹¹ the last sleepover occurred during the September school holidays in 2014;¹²
 - (c) she was putting leftover food back inside Mr Maddison's house and, as she left to go back outside, he pulled on her shirt and pulled her back inside; at that point he "started doing inappropriate things";¹³
 - (d) the "inappropriate things" were "touching where he shouldn't be"; that was then clarified as the "bikini areas", and touching with his hands; the "bikini areas" were her private parts;¹⁴

⁴ *R v Baden-Clay* [2016] HCA 35, at [65]-[66].

⁵ AB 163.

⁶ AB 165.

⁷ AB 166.

⁸ AB 167.

⁹ AB 174.

¹⁰ AB 173 line 49.

¹¹ AB 175.

¹² AB 176.

¹³ AB 177.

¹⁴ AB 178.

- (e) she was asked to identify whereabouts in the bikini areas she had been touched, and she identified the top half and bottom half;¹⁵
 - (f) she told him to stop, but he would not, so she ran out of the house;
 - (g) when he touched her in the bikini areas, his hand was under the clothes, and specifically under her shirt when he was touching the “top half”;¹⁶
 - (h) she did not tell anyone because she was scared and ashamed, and “it was embarrassing”;¹⁷
 - (i) his hand was only under the clothes for the top half;¹⁸ when he touched her bottom half, it was the front bit of the bikini area, between the legs; he touched there with his hand;¹⁹
 - (j) on other occasions he had done the same thing, despite her telling him to stop;²⁰
 - (k) he tried to kiss her as well, which she identified as “not normal kissing ... I think it’s called French”;²¹ “... he tries to put his tongue in my mouth ... it’s disgusting”;²²
 - (l) on another occasion “he walked in on me when I was having a shower”; FM’s bathroom had just been painted so Mr Maddison said that G could have a shower over at his house; she did not want to, but FM said she should have a shower; Mr Maddison “walked in on me and handed me a towel ... just stood there staring at me ... it was freaky ... I pulled the shower thing across”;²³ and
 - (m) her refusal to reveal these things at the first interview was because she was scared at the time and worried, and needed time to think; she said: “cause first I just told [the teacher] and then like two seconds later the police show up ... wanting to talk [to] us”.²⁴
- [10] In her trial evidence²⁵ she confirmed that what was recorded in the interviews was the truth. She said the incident where Mr Maddison had pulled her back by the shirt occurred when they were sitting down on the couch in the lounge room.²⁶ As to the incident when she was having a shower, she said she was shocked when he came into the bathroom because, whilst she knew the door did not lock, she did not know that he would come in.²⁷ She did not realise who it was who had come in so she “actually faced him”. He hung a towel on the rack and then walked out after staring at her for a bit. She grabbed the shower curtain and pulled it across.²⁸

¹⁵ AB 179 line 16.

¹⁶ AB 180.

¹⁷ AB 182.

¹⁸ AB 182.

¹⁹ AB 183.

²⁰ AB 184.

²¹ AB 184.

²² AB 184.

²³ AB 185.

²⁴ AB 186.

²⁵ Given when she was about 15 and a half years old.

²⁶ AB 19.

²⁷ AB 21.

²⁸ AB 22.

- [11] In cross-examination, G largely adhered to what she had said in the second interview. Aspects of her evidence under cross-examination were as follows:
- (a) whenever she went to Mr Maddison's house she was always with somebody, and she did not go there at his request;²⁹
 - (b) she kept the events to herself for a while because she was ashamed and scared;³⁰
 - (c) as to the incident in the lounge room, he put his hand up her shirt, then took it out; she went to stand up and then he "touched me in the other area", and then kissed her, putting his tongue in her mouth; she then ran off out the back door;³¹ he pulled her shirt and they sat down on the couch and "straight away he put his hand up my shirt";³²
 - (d) on previous occasions Mr Maddison had tried to touch her, but he had never gone underneath her shirt; rather "it would always be on top"; she explained that when he put his hand underneath "I didn't really move";³³
 - (e) when he touched her vaginal area on that occasion, it was on the outside of the clothes;³⁴
 - (f) she said that he had touched her before under the house (where the car would go); on those occasions he would touch her bum and then "the front bit", but he had never gone under her shorts on those occasions;³⁵
 - (g) she did not mention the touching under the house to the police because of her embarrassment;³⁶
 - (h) she said that Mr Maddison had touched her or kissed her a lot of times, "way more than three times";³⁷
 - (i) when pressed as to what she could actually remember, she identified "the couch thing" and "the couple of times under the house", and "the shower thing";³⁸
 - (j) she said the only time it had occurred inside the house was "the couch thing"; it only happened the once inside the house; when they were under the house he was mainly trying to kiss her; she said "I can honestly say that he has kissed me way more times than [he has] actually touched me", and "he's never gone under my shorts";³⁹

²⁹ AB 27.

³⁰ AB 29 lines 13-14.

³¹ AB 29 lines 30-33; AB 31 lines 36-38.

³² AB 41 lines 14-18.

³³ AB 29 line 40 to AB 30 line 7.

³⁴ AB 30 lines 18-20.

³⁵ AB 30 lines 24-42.

³⁶ AB 31 lines 4-9.

³⁷ AB 32.

³⁸ AB 32 lines 24-28.

³⁹ AB 32 line 38 to AB 33 line 19.

- (k) she said she had never told her father what had happened, but she told her teacher; when her father did find out he did not believe her and (she thought) neither did her mother;⁴⁰
- (l) she agreed that she had got into quite a lot of trouble at school, had “a little bit of attitude”, lied to her mother a lot, and lied at school; she agreed that her behaviour at school included walking out of the class, getting into trouble for bullying other children, wagging school and getting suspended a lot of times;
- (m) she denied the defence case that was put to her, that when she went to have a shower Mr Maddison had merely showed her where the shower was and given her a towel, and then walked back outside;⁴¹
- (n) she agreed that on none of the occasions when she had been touched did she kick, punch or push him away, or yell out;
- (o) she revealed that she had “disabilities” requiring that she be part of the Special Education Program;⁴² and
- (p) it was put to her that none of the events had happened, whether touching under the shirt, touching over her shorts, or kissing, and on each occasion she denied that was the case; she also denied the suggestion that she was making up her story, saying “I will admit that I do lie, but when it comes to these sort of things, I don’t lie ... this is a different situation”.⁴³

Evidence of G’s father

- [12] G’s father said that he had lost contact with her shortly after her birth, and only renewed contact in about August 2013. From then on, G would visit him for overnight stays. At that time he was living with his partner, FM. The visits were every fortnight or once or twice a month. Sometimes they would be just overnight, usually a Saturday night, but a couple of times it was on a Friday and Saturday. He said that on several occasions they went over to socialise at Mr Maddison’s house. On occasions G would assist in the garden when he and FM were assisting Mr Maddison.
- [13] He could recall the last occasion when G had attended his house, which was in the September/October 2014 school holidays. He could not recall whether it was the first week or second week of those holidays. He said he did not notice any change in G’s behaviour in the time leading up to that visit, saying “she was always happy to see me, happy to come over”.⁴⁴ During the period when G was coming over to stay with him, she did not make up any excuses about not wanting to go to Mr Maddison’s house, and she went over with FM to help with the garden. G made no complaints about being kissed or touched, and the first he heard of it was when police became involved.⁴⁵

Evidence of FM

⁴⁰ AB 34 line 18.
⁴¹ AB 39.
⁴² AB 43.
⁴³ AB 46-47.
⁴⁴ AB 69.
⁴⁵ AB 70.

- [14] FM said that she could not remember when she first came into contact with G, but the last contact she had was during the September/October 2014 holidays. Up to that time, G would come to visit for overnights or weekends to spend time with her father. During that holiday period FM was working, but G's father stayed at home.
- [15] She described assisting Mr Maddison in the garden, as well as little bits of renovation and painting. G's father did not participate. G would come over on occasions to give her a hand, but mostly she would just watch. G and Mr Maddison appeared to get on, and they were always laughing and joking.⁴⁶
- [16] She said she could remember a time when G had a shower at Mr Maddison's house. That was because her own bathroom still had wet paint and both she and G had a shower over at Mr Maddison's house. G had her shower first. At the time she was having that shower, FM was outside at the bottom of the stairs, having a cigarette and a drink. FM said Mr Maddison took G upstairs to the bathroom, "showed her where shampoo and stuff was and, you know, just showed her where everything was that she might need".⁴⁷ She agreed that she had not actually seen that because she was downstairs, but said that G did not know where the bathroom was, so Mr Maddison took her upstairs to show her. FM was "fairly sure we took our own towels because it was only next door, so I'm not going to dirty all of [Mr Maddison's] towels just for one shower".⁴⁸
- [17] She thought that Mr Maddison and G were not very long upstairs together, perhaps "a couple of minutes". He then came down and sat with FM at the table. Eventually, having taken a fair while to have a shower, G came down as well. FM told her to take the dirty clothes and everything back home and put them in the wash, and to take her towel back home.⁴⁹ G did not look upset when she came back down, nor did FM notice anything odd with her behaviour.⁵⁰
- [18] FM described occasions when she would attend at Mr Maddison's house for a barbecue or other social occasions. G's father did not attend very often, just "every now and again".⁵¹ She recalled an occasion when they had a barbecue and she told G to assist Mr Maddison and take food upstairs so he could put it in the fridge. They both went upstairs while FM cleared off the table downstairs.⁵² They were away for not more than about five minutes. G had been assisting in the garden work, but "she'd get bored and then she'd go back with her father and by then she'd come back over and backwards and forwards through the day".⁵³
- [19] In cross-examination FM said that G could be very needy and a bit overpowering at times. She would describe her as immature and an attention seeker, but definitely not shy. G never made any excuses about not wanting to go over to Mr Maddison's house, but when she did she would be there for a little while and then she would get bored.⁵⁴

⁴⁶ AB 73.

⁴⁷ AB 74 line 13.

⁴⁸ AB 74 line 30.

⁴⁹ AB 75.

⁵⁰ AB 78 lines 30-38.

⁵¹ AB 75 line 33.

⁵² AB 75 lines 39-44.

⁵³ AB 76 line 13.

⁵⁴ AB 78.

- [20] On the occasion when G took food upstairs at the same time as Mr Maddison, FM said she could hear them chatting in the kitchen.⁵⁵ She said at no point did she not hear them, or hear that the chatter stopped. G came down first, but she was not running and did not look upset.⁵⁶ She said that G had never made any excuses about not wanting to go over to Mr Maddison's house, and enjoyed going over there.

Evidence of the teacher

- [21] The teacher worked in the special education unit at G's school. She recalled that in late October 2014, G appeared very distressed and visibly upset. She took G into a kitchen where G told her that "the neighbour touches her".⁵⁷ During the conversation G was quite distraught. G told her about her father being friends with the neighbour, but she was concerned about telling more. In cross-examination she agreed that she had not been told where the touching had occurred nor on which parts of the body. She did not reveal what G had said to G's mother because that "wasn't my position". She also agreed that G did not give any specific examples of how she was touched, but the teacher said she "wasn't in a position to push for any further information".⁵⁸

Evidence of the guidance officer

- [22] A guidance officer at G's school gave evidence. She said that the special education facility was for the most vulnerable young people with either an intellectual disability, autism spectrum disorder, hearing impairment, vision impairment, physical impairment or who are verified with some sort of disorder. G had autism spectrum disorder. She spoke to G in late October.⁵⁹ G was "too embarrassed to disclose any specific details" and she did not wish to go to Mr Maddison's house (where she was scheduled to go that weekend) because "the last time she went there it got worse".⁶⁰
- [23] In cross-examination she said that G was quite withdrawn and embarrassed, and avoiding eye contact. She could recall G saying that she did not want her mother and father to find out, because then she would not be able to see her father and Mr Maddison might get kicked out of his home.⁶¹

Evidence of G's mother

- [24] G's mother gave evidence. She said that in about August 2013 and through to the school holidays in 2014, G regularly visited her father's house. She was called to G's school in late October 2014 where she was given some information from police officers about the first interview with G. On the way home she asked G why she had closed up in the interview, and the response was that she felt "ashamed and embarrassed".⁶²

55 AB 80.

56 AB 81.

57 AB 84.

58 AB 88.

59 The same day at G's conversation with the teacher.

60 AB 92-93.

61 AB 94.

62 AB 95.

- [25] In cross-examination she agreed she had been told by a teacher that G had been inappropriately touched. However, G did not give her any details.

Evidence of the aunt

- [26] On 23 October 2014, G's aunt (the sister of G's mother) noticed that G was quite upset. After a time G told her that Mr Maddison "had touched her", which she then identified as having "grabbed her on ... her chest area".⁶³ G told her that Mr Maddison had put his hands under her shirt. She asked G if there was anything else and G told her that he had "touched her private and pointed to her vagina".⁶⁴ At the time G was quite upset and in tears.
- [27] In cross-examination she said that she did not speak to the police, and when G had told her, they were back at home.

Evidence of the uncle

- [28] G's uncle (the partner of the aunt) gave evidence. On 23 October 2014, having been told something by the aunt, he spoke to G. After having that conversation he took G to the police station. In cross-examination he agreed that he had a good relationship with G, who would openly tell him of any difficulties or problems she had. When he spoke with G, she said that she had been touched by the bloke next door, and that he had been pulling her into a shed and touching her in the bikini area.⁶⁵ In re-examination he said that he had asked G how she had been touched and G had responded: that she had been touched over the top of her clothes in her vaginal area, and over her breast area under her clothes. He attempted to verify whether skin contact had been made, but G "just shut off ... went very quiet".⁶⁶

Other evidence

- [29] A police officer was called to identify the recordings of the interviews.

The summing up

- [30] The learned trial judge directed the jury that they had G's allegations and nothing else, and "there's no other objective evidence to support what she says".⁶⁷ Consequently, they were directed that they had to assess the credibility and honesty of each witness, but in particular G, before relying upon it. They were also told that the passage of time (nearly 18 months) since the events, did not make it easier for people to remember. In dealing with all of the counts, the jury were reminded that the defence case was simply that it did not occur and therefore the real issue in each case was whether the event had happened at all.⁶⁸
- [31] As to count 4 (the incident involving the shower), the jury were directed that they could only convict Mr Maddison if they were satisfied not only that he did observe G in the shower naked, but also that the purpose of doing that was to observe her in a private act. The learned trial judge went on:

⁶³ AB 99.

⁶⁴ AB 99.

⁶⁵ AB 103.

⁶⁶ AB 104.

⁶⁷ AB 128 line 33.

⁶⁸ AB 131-132.

“It’s a matter for you and your assessment of the evidence. But you might think – the defence case is that he never went in there when she was naked, but the defence case appears to be that he did go in there at one stage to give her a towel. Now, it might be that even if you found that he did go in there when she was in the act of having a shower and she was naked, if the purpose was wholly and solely to give her the towel, then you may not be able to be satisfied that the purpose was of observing a private act. Again, it’s a matter for you and your assessment of the evidence.”⁶⁹

- [32] Having reminded the jury of G’s evidence, the jury were directed that the major issue in respect of each of the charges was whether the incidents occurred at all. The additional factor in respect of count 4 was whether the observation was made for the purpose of observing G in the course of a private act, namely showering.
- [33] The learned trial judge also reviewed the evidence of preliminary complaints from the teacher, the guidance officer, the mother and the aunt. They were carefully directed that their evidence could only be used in relation to G’s credibility. In addition, the jury were told that if there were inconsistencies between what G said to other people and what she said in Court, or to the police, that may have an impact upon their doubts about G’s credibility or reliability.⁷⁰ However, they were also directed that they might think that the mere existence of inconsistencies did not mean that they had to reject G’s evidence, and that some inconsistency could be expected, given that G was a child.
- [34] The learned trial judge then summarised the arguments from the prosecution and the defence. Matters on behalf of the prosecution included:
- (a) G was not lying, nor exaggerating, and when she had been given the opportunity to embellish something, she did not do so;
 - (b) G had been manipulated by Mr Maddison, and it was only when he went too far in terms of touching that she told other people;
 - (c) there was a distinction drawn by G in terms of her preparedness and history of confessed preparedness to lie and get in trouble at school, as opposed to speaking about these events, where she said “this is different”;
 - (d) in the context of her father and FM being friends with Mr Maddison, it was not surprising that G did not make a complaint earlier than she did; and
 - (e) there was ample opportunity for Mr Maddison to commit the offences; he was alone with her and there was enough time to do so.
- [35] The defence case was summarised, and included these factors:
- (a) the jury could not rely on G’s evidence and her conduct during the interviews as opposed to her conduct in Court, suggested that she was making up the allegations;
 - (b) it was simply implausible that if the alleged touching had happened, G would not have said anything to her father or FM, nor would she have readily continued to go next door and have contact with Mr Maddison;

⁶⁹ AB 132 lines 34-41.

⁷⁰ AB 139 line 16.

- (c) as to the shower incident, it was clear that G's having a shower in Mr Maddison's house was not his idea, and he went upstairs simply to show her where the shower was; G made no complaint when she came down and there was no difference in her behaviour;
- (d) there were major inconsistencies in her evidence in respect of the counts that arose out of the events on the couch in the lounge; the inconsistencies included her description of where it occurred,⁷¹ whether there was skin-on-skin contact, and if so, where that contact occurred;
- (e) it was suggested that G's evidence was simply implausible, and if it had happened the way she described, she would have been frightened and screamed, or resisted;
- (f) G's background of behaviour at school (punching and kicking boys) suggested that she was the sort of person who would have resisted or at least called out;
- (g) there were no changes in her behaviour observed by FM or her father; and
- (h) her history at school showed a girl with behavioural difficulties; she was disruptive, had been suspended, she had lied to teachers and others, and was not shy; that made her evidence unreliable.

[36] Having reviewed the arguments put by each side, the jury were reminded:

“So the critical issue in this case really is are you satisfied beyond reasonable doubt that [G] was both honest and accurate when she gave her evidence with respect to each charge. Now, to answer that question you need to look at the whole of the evidence. It's a matter for you what you make of all of the witnesses in this case.”⁷²

Discussion

[37] Mr Maddison was represented by counsel when G's pre-recorded evidence was taken, and at the trial, but represented himself before this Court. His written outline and oral address focussed on what he contended were multiple contradictions and inconsistencies in G's evidence, either internally or when compared to the evidence of other witnesses, which meant that the jury should have had a doubt about his guilt. I do not intend to mention all of the matters raised by Mr Maddison in this way, but they included:

- (a) inconsistencies about what door she left through after the couch incident;
- (b) her inability to give a time period for how long the touching continued when on the couch;
- (c) the lack of immediate complaint; G's description of why she did not tell anyone was contradictory in that she said that she was scared at the time and worried, but when asked what she was scared and worried about, said that she just needed time to think;
- (d) G said that she did not kick or punch Mr Maddison, or push him away, notwithstanding that the touching had happened before; further, in her evidence she agreed that if she had a fight with any of the boys at school, and

⁷¹ The kitchen versus the lounge.

⁷² AB 141 lines 37-40.

they touched her in a way she did not like, she would punch them or kick them or hit them with her bag;

- (e) inconsistencies about whether Mr Maddison handed her the towel or put it on the rack; where she said she was standing in the shower (away from the showerhead, and with the curtain not drawn);
- (f) inconsistencies as to the frequency with which she went to Mr Maddison's house, first saying that it was most of the time when she went to visit her father; there was a variation in her evidence when she said she would stay over at her father's house every three weeks,⁷³ but then the visits were not organised, but when he actually had the time;⁷⁴
- (g) there were reasons to doubt her memory in that she agreed that it was only on the morning of the pre-recorded evidence that she had remembered that the touching happened on the couch,⁷⁵ and she could not recall giving that item of detail to the police in the interview;⁷⁶
- (h) inconsistencies in her evidence about the time period between the incident on the couch and when she told the teacher; at first she said she told the teacher the next day at school, but then said it might have been a week after that;⁷⁷
- (i) G had agreed that she lied a lot, and got into trouble for lying; G's admission to being suspended from time-to-time, to wagging school and getting into trouble at school for bullying kids, and getting suspended were all patterns of behaviour inconsistent with the allegations she made;
- (j) her father noticed no change in her behaviour, adding that she was always happy and wanting to visit him; FM noticed no change in demeanour after the shower incident nor after the occasion when the incident on the couch was said to have occurred; G did not make up excuses for not going over to Mr Maddison's house, but actually asked if she could;
- (k) FM's evidence about the day of the shower incident and the day of the couch incident were inconsistent with that of G, particularly as to the time periods and therefore the lack of opportunity for the incidents to have occurred; and
- (l) the teacher's evidence was that G had told her that she was going to her father's house on the weekend coming, but that she did not want to go; that was the occasion when G told the teacher what had happened; G also told the guidance officer that she was going to her father's that weekend; the mother could not recall that any such arrangements had been made; however FM said there was never a plan to have G stay that weekend.

[38] As will become apparent from the summary above, most or all of Mr Maddison's suggested inconsistencies were concerned with matters of detail rather than matters which went to the core of the allegations as to offending conduct. Further, he relied on what might be inferred from the manner in which G gave evidence, to contend that she was obviously lying.

⁷³ AB 26 line 2.

⁷⁴ AB 28 line 7.

⁷⁵ AB 31 line 17.

⁷⁶ AB 31 lines 15-31.

⁷⁷ AB 33 lines 30-47.

- [39] One specific complaint raised by Mr Maddison was that the learned trial judge failed to instruct the jury about the proper process of drawing inferences, and in particular that where an inference is open and consistent with innocence, then that inference must be drawn.⁷⁸ That contention was also advanced in oral argument. It is misconceived. This was not a case dependent upon circumstantial evidence. G gave direct evidence of what had taken place, and the major issue for the jury was simply whether they could accept G's evidence as credible and reliable, on each count.
- [40] Mr Maddison's contentions were that there were so many inconsistencies or discrepancies that a guilty verdict was not reasonably open. Central to that contention was the body of evidence from surrounding adults to the effect that they had not noticed any change in demeanour or behaviour on G's part, and G had not made any complaint to them prior to it arising as a result of speaking to the teacher. Further, reliance was placed on the fact that the evidence of the adults was that there had been no plan for G to visit her father on the weekend following when the complaint was raised, thus (Mr Maddison contended) disproving G's reason for being upset at the time of her disclosure. The lack of any corroboration by the father, FM or G's mother should have lead the jury to conclude that they could not be satisfied of guilt beyond reasonable doubt.

G's demeanour during her evidence

- [41] Mr Maddison's contentions about what might be drawn from G's demeanour during the giving of her evidence, both in the interviews and in pre-recorded evidence, meant that it was necessary to view the s 93A interviews and the pre-recorded evidence. There is nothing about G's demeanour in the course of those three occasions that would, in my respectful view, cause the jury to doubt her credibility or reliability. In the first interview, there are repeated occasions where the interviewer asked what had happened or what she meant by something, only to be met by silence, with G often putting her head down or avoiding eye contact.⁷⁹ The jury could easily have drawn the conclusion that G was distinctly uncomfortable about what was being asked, and therefore reluctant to respond in the first interview. The same was not the case in the second interview which occurred several hours later. Whilst there were occasions during that interview when G appeared uncomfortable or reluctant to reveal embarrassing things, it was not to the same degree as the first interview. The jury could well have concluded that G was being forthright, responsive and detailed in her answers. Moreover, she was consistent in the nature of the details that she gave in that interview.
- [42] When one views the pre-recorded evidence, the impression that the jury could well have drawn from the second interview was likely to have been reinforced. By then G was 15 and a half and therefore that much older than at the second interview. She was responsive to questions, consistent in her answers, and did not appear to be evasive or uncooperative.
- [43] In my view, there were features of her evidence which may well have impressed the jury as being indicators of her evidence being credible and reliable:
- (a) when it would have been easy to amplify the degree of touching or the nature of it, G maintained a consistent line; for example, she was firm in the fact that

⁷⁸ Mr Maddison's written outline, page 8.

⁷⁹ Examples appear at points which accord with AB 161 lines 30, 37 and 58; AB 163 lines 19, 23 and 38; AB 165 line 39 and AB 167 line 10.

the occasion on the couch was the first time that she had been touched underneath her shirt; further, she consistently maintained that she had never been touched under her shorts; finally, she consistently maintained that she had been kissed by Mr Maddison more times than he had actually touched her;

- (b) she readily, and without apparent artifice, accepted her troubled history of lying, wagging school, getting in trouble for bullying and being suspended; once the jury knew that she had a form of disability, namely autism spectrum disorder, and that meant she had to attend a special education unit, the jury may well have concluded that her troubled history was attributable to that rather than some sort of pre-disposition to dishonesty; in that context it must be recalled that the defence case was that G was making up a story and none of the events had ever happened;
- (c) G was consistent in her explanations for not having spoken up earlier, and in more detail to the police; at the second interview she described herself as being scared, ashamed and embarrassed;⁸⁰ as to why she did not say anything in the first interview, she said she was “scared at the time and worried ... like I just needed time to think and all that”;⁸¹ she used similar terms in her pre-recorded evidence, referring to being ashamed and scared, and keeping things to herself for a while;⁸² and
- (d) the jury could well have formed the view that when G responded to the suggestions that the events had never occurred, she did so in a composed way; she maintained that composure when it was suggested that she was lying⁸³ and the jury may well have found her response compelling: “I will admit I do lie, but when it comes down to these sort of things, I don’t lie ... This is a different situation”.⁸⁴

Contradictory evidence

[44] One of the main themes of Mr Maddison’s contentions was that the evidence of G’s father, his partner FM, and her mother,⁸⁵ consisted of a body of contradictory evidence such that the jury could not reasonably accept the evidence of G. I do not accept that contention for a number of reasons.

[45] First, their evidence has to be understood in context. Whilst she had reunited with her father and visited him with some frequency, it was not usually the father who accompanied her to Mr Maddison’s house. That was normally FM, who had an interest in the gardening, and assisted Mr Maddison from time-to-time. By his own evidence, the father described himself as not being particularly social and distancing himself. Therefore the jury may have thought that even though he described himself as having “a pretty normal father and daughter” relationship, he was not in a good position to truly assess what might be signified by G’s demeanour, or her willingness to go with FM when FM was doing the gardening at Mr Maddison’s

⁸⁰ AB 182.

⁸¹ AB 186.

⁸² AB 29 and 31.

⁸³ AB 47.

⁸⁴ AB 47 lines 6-12.

⁸⁵ As to G’s willingness to go to Mr Maddison’s house, no change in her behaviour or demeanour, and no complaint.

house. A good example of his remoteness from G is the fact that it was not he who would organise for G to visit, but rather FM and G's mother.

[46] Further, FM herself gave evidence that there were two occasions which matched what G had described, in terms of the shower incident and the occasion for the incidents she described in the lounge room on the couch. As to the shower, FM said that Mr Maddison went up with G, to show her where the shower was. As for the other occasion, she gave evidence of G and Mr Maddison going upstairs together, while she (FM) stayed downstairs having a cigarette and a drink. On each occasion she said that she could hear them, but the jury could have discounted that.

[47] Secondly, to the extent that all three said that they did not notice any change in G's demeanour, and that G did not resist going over to Mr Maddison's house, there were reasons why the jury may have discounted that evidence as tending to show that G was unreliable or lacked credit. One is that G had an autism spectrum disorder, which may have affected the way she reacted. Another is that G had only recently reunited with her father, and evidently enjoyed the company of FM, so that whilst she wanted to visit her father, the real companionship came from FM, who was prone to go over and help in Mr Maddison's garden and elsewhere. Another reason is that G's evidence was that the touching escalated in nature right at the end when, for the first time, he put his hand under her shirt. The jury might have thought that was a trigger for G, which had not been present before that.

[48] Thirdly, whatever evidence those three gave, the jury may have accepted that G made the complaints referred to in evidence by the teacher, the guidance officer and G's mother. Her complaints were consistent to each, consistent with what she had said, and attributed embarrassment as the reason for not disclosing earlier.

Inconsistent evidence

[49] As will be evident from the matters referred to above, all of the inconsistencies raised by Mr Maddison on his appeal were ones which were raised with the jury at the trial. All of them fall into a category which go to the minor details, rather than to the heart of the complaints. It is not at all surprising that the evidence of a young person aged 14 or 15 and a half might have inconsistencies in it, given the normal frailty of memory and the passage of time. Equally is that so when two witnesses refer to the same events. The inconsistencies that Mr Maddison complains about do not, in my view, rise to such a level that it could be said that the jury could not have accepted the evidence of G. Ultimately the jury were appraised of all the inconsistencies to which Mr Maddison refers, had the benefit of addresses upon them, and it was for the jury to weigh them in the balance. Insofar as those inconsistencies draw any support from the evidence of anyone other than G, the jury had the benefit of seeing and hearing those witnesses, when this Court did not. That is a considerable advantage for the jury, which must be acknowledged by this Court.

[50] The Crown case depended upon the acceptance of the evidence of G. That was made clear to the jury, along with the need to carefully examine the evidence of each of the witnesses, but particularly G. G's evidence was consistent and clear, and there were cogent reasons for accepting it. More importantly, FM's evidence confirmed the opportunities for the offending, just as G had described them. Cross-examination of G did not reveal any material inconsistency going to the root of the offending.

[51] In *MFA v The Queen*⁸⁶ McHugh, Gummow and Kirby JJ remarked that it was not uncommon in most trials for some aspect of the evidence to be less than wholly unsatisfactory. Their Honours then said:

“Experience suggests that juries, properly instructed on the law (as they were in this case), are usually well able to evaluate conflicts and imperfections of evidence. In the end, the appellate court must ask itself whether it considers that a miscarriage of justice has occurred authorising and requiring its intervention.”

[52] I am unpersuaded that the evidence reveals such conflicts or imperfections that it was not open to the jury to accept the evidence of G, and convict. I do not consider that a miscarriage of justice has occurred.

[53] I would dismiss the appeal.

[54] **BOND J:** I agree with Morrison JA.

⁸⁶ (2002) 213 CLR 606, at 634.