SUPREME COURT OF QUEENSLAND

CITATION:	*R v Focas* [2017] QCA 249
PARTIES:	**R** **v** **FOCAS, Demetreos** (appellant)
FILE NO/S:	CA No 347 of 2016 DC No 750 of 2016
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	District Court at Brisbane – Date of Conviction: 12 December 2016 (Dorney QC DCJ)
DELIVERED ON:	27 October 2017
DELIVERED AT:	Brisbane
HEARING DATE:	22 June 2017
JUDGES:	Holmes CJ and Sofronoff P and Fraser JA
ORDER:	**Appeal dismissed.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – VERDICT UNREASONABLE OR INSUPPORTABLE HAVING REGARD TO EVIDENCE – APPEAL DISMISSED – where the appellant was in a relationship with the complainant's mother – where the appellant lived with the complainant, the complainant's mother and the complainant's twin sister – where the complainant was aged between seven and 13 at the time the offences were committed – where the complainant gave evidence that the appellant came into her bedroom on several occasions and indecently touched her – where the complainant gave evidence that on one occasion the appellant penetrated her vagina with his finger – where the complainant's sister shared a bed with the complainant – where the complainant's sister gave evidence that the appellant frequently came into their bedroom and lay next to the complainant on the bed – where the complainant first made the allegations several years after the offending took place – where the complainant's evidence of the later offending was inconsistent with the timeline of her mother's relationship with the appellant – where the appellant was convicted of one count of maintaining an unlawful sexual relationship with a child under 16 years, one count of rape and one count of indecent dealing with a child under the age of 12 years with a circumstance of aggravation – whether it was open to the jury to accept the complainant's evidence

CRIMINAL LAW – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS OF APPEAL – INCONSISTENT VERDICTS – where the appellant was convicted of one count of maintaining an unlawful sexual relationship with a child under 16 years, one count of rape and one count of indecent dealing with a child under the age of 12 years with a circumstance of aggravation – where the appellant was acquitted of one count of rape and one count of indecent dealing with a child under 16 years with a circumstance of aggravation – where the appellant was convicted on the counts related to the earlier offending and acquitted on the counts related to the later offending – where the complainant first made the allegations several years after the offending took place – where the complainant's evidence of the later offending was inconsistent with the timeline of her mother's relationship with the appellant – whether it was open to the jury to accept the complainant's evidence in relation to the earlier offending but to reject the complainant's evidence in relation to the later offending

Jones v The Queen (1997) 191 CLR 439; [1997] HCA 56, distinguished
M v The Queen (1994) 181 CLR 487; [1994] HCA 63, distinguished
MacKenzie v The Queen (1996) 190 CLR 348; [1996] HCA 35, cited
Osland v The Queen (1998) 197 CLR 316; [1998] HCA 75, cited
R v Kirkman (1987) 44 SASR 591, cited
Whitehorn v The Queen (1983) 152 CLR 657; [1983] HCA 42, cited

COUNSEL: A J Glynn QC for the appellant
J A Wooldridge for the respondent

SOLICITORS: Aejis Legal for the appellant
Director of Public Prosecutions (Queensland) for the respondent

[1] **HOLMES CJ:** I agree with the reasons of Sofronoff P and with the order he proposes.

[2] **SOFRONOFF P:** The appellant was convicted after a trial of one count of maintaining an unlawful sexual relationship with a child under 16 years. That offence was alleged to have been committed between 18 March 2006 and 20 December 2012. He was also convicted of one count of rape and another count of indecent dealing with a child under the age of 12 years with a circumstance of aggravation. Those two offences were alleged to have been committed between 18 March 2006 and 1 January 2007. They constituted counts 2 and 3 and were alleged to have been committed on the same occasion.

[3] The appellant was acquitted at the same trial of one count of rape and one count of indecent dealing with a child under 16 years of age with a circumstance of aggravation.

Both of these offences were alleged to have been committed between 31 December 2009 and 20 December 2012.

[4] All of the offences relate to the same child, a girl born on 8 January 1999.

[5] The appellant appeals upon two grounds. The first ground is that the verdicts were unreasonable and unsupported by the evidence. The second ground is that the verdicts were unreasonable because the verdicts of not guilty on counts 4 and 5 were inconsistent with the verdicts of guilty on counts 1, 2 and 3.

[6] In 2006, after the complainant's parents separated, she moved into a house at Wellington Point together with her twin sister and her mother. The complainant's mother had purchased that house with the appellant. The complainant originally slept in her own room but she came to share a bedroom with her twin sister where they both slept in the same double bed.

[7] It was common ground that frequently, after the rest of the family had gone to bed, the appellant would stay up and go to bed much later. The complainant said that the appellant would then come into the room she shared with her sister and begin to touch her. She said this happened for a period of six years about three times a week.

[8] Counts 2, 3, 4 and 5 were constituted by acts that were alleged to have been repeated throughout the period from 2006 until about 2011 when the offending ceased.

[9] The first of these events, which constituted counts 2 and 3, occurred when the appellant entered the girls' bedroom and took off the complainant's pyjama top. He then sucked her breasts or nipples one or more times. He also placed his hand under her pants and penetrated the complainant's vagina with his finger one or more times. While he did this he held her arms restrained above her head. The complainant said that the penetration extended to half a finger length. He moved his finger in a vibrating action.

[10] Counts 4 and 5 involved similar acts. However, they were said to have been the last occasion upon which the appellant committed such assaults upon the complainant. Again, the count of indecent dealing involved taking off the complainant's pyjama shirt or lifting it up and sucking on her breasts one or more times. The count of rape involved the same kind of penetration by the appellant using a finger.

[11] The complainant's evidence was supported by her twin sister. She gave evidence that the appellant frequently came to their bedroom. She lay on the other side of the bed from her sister facing in the opposite direction. She had her eyes shut. She recalled feeling the bed shaking and hearing the appellant talking to the complainant.

[12] Because it is argued that the guilty verdicts were unreasonable, it is material to set out some of the evidence of the complainant in order to indicate its character. Relevantly, she had told police:

> "SCON MCDONALD: Yeah did you, did you remember what you did feel though? I know you didn't see it but as far as feeling it goes.

> You know how you can, when you say being touched somewhere, you can say oh was for example it was on the outside.
>
> COMPLAINANT: Yep.
>
> SCON MCDONALD: Or if you touch somewhere you can touch someone on, on the inside.
>
> COMPLAINANT: Oh he would go inside probably half way through his finger.
>
> SCON MCDONALD: Okay. So about a half, half a finger length inside your vagina.
>
> COMPLAINANT: Yeah cause you could, yeah you could feel him touching the inside.
>
> SCON MCDONALD: Inside the.
>
> COMPLAINANT: Yeah.
>
> SCON MCDONALD: Okay
>
> COMPLAINANT: [INDISTINCT].
>
> SCON MCDONALD: Yeah okay. Alright and, and you said that he moved it, he moved it [INDISTINCT] you said he moved it about um like a um [sic].
>
> COMPLAINANT: Vibration."

[13] The complainant also told police that the appellant had said to her "this is our little secret". She said that she had thought that by not telling anyone it would just go away.

[14] The complainant did not disclose these matters to anyone at the time. However, she recalled her sister telling their mother about the bed moving and about the appellant whispering to the complainant. Their mother did not accept these stories.

[15] The complainant explained how she came to make a statement to the police. The following passage from her interview with police gives a sufficient indication of her evidence about this:

> "Well when I came back kind of thing, I thought it was an on and off thing and it was just my imagination kind of thing but when I asked mum and stuff what happened and where we were living before that actual house and stuff like that, it felt like it did happen. It wasn't like one of those dreams oh it's a nightmare it'll be gone. It kept coming back and it's like oh maybe it did happen kind of thing. Like oh he couldn't of come in kind of thing and you couldn't, that's what I was saying to myself. He couldn't of done that kind of thing but when I got closer and having those flashbacks and those dreams like he did do it."

[16] Ultimately, the complainant's sister told their father, who had separated from his former wife a long time before. The complainant's father then informed her mother and, in due course, police were told.

[17] The relationship between the complainant's mother and the appellant had broken down. According to the complainant's mother this happened in September 2010. The house that they had acquired mutually was then put up for sale. Nevertheless, the appellant had belongings in the house and, for a period, lived there separately from the complainant's mother although under the same roof. According to the complainant's mother, "He did his thing and I did my thing".

[18] This break in the appellant's relationship with the complainant's mother is significant because the complainant said that the assaults and her contact with the appellant ceased when that happened. According to the complainant, the last of the assaults upon her, constituted by counts 4 and 5, occurred at the end of year 6, which was at the end of 2010. The complainant placed the offending at the end of 2010 when she began her end-of-year holidays. The complainant had told police that she had had no contact with the appellant after he ceased his assaults upon her.

[19] At about the time of her disclosures to her parents the complainant had also been in touch with the appellant's son. They exchanged text messages. The character of the messages was capable of affecting the reliability of the complainant's evidence about her recollections. Thus, she texted:

> "I have to tell someone and I can't tell [my sister] because it freaks her out and I can't tell dad because he wasn't there. Mum never listens to us and never will. I just want it to go away. I can't sleep without knowing if it really happen [sic]".

[20] The appellant's son responded to the effect that she could tell him about it. The complainant's reply was:

> "It is a dream but it is in pieces so I can't see the while [sic] story.
>
> Can you remember things when you were little?"

[21] In December 2011 the complainant had also been in touch with the appellant by text by means of Skype. Among the texts that the complainant sent in this way were messages in which she said "love you lots bye", "love ya", "say hi to the boys and that I love and miss them all" and "I miss motor bike riding with u and the boys whiz I could she [sic] u and the boys". Messages of that kind are, of course, capable of being regarded as inconsistent with her allegations.

[22] The appellant had established the Skype account. One of his messages was:

> "[I] am worried that you will stop talking to me and get angry at me and say bad stuff to me and about me, because mom or someone else will say crap that you will believe about me and I will lose you forever… even though it feels like I have lost you alreaddy [sic]."

[23] He also sent the following messages:

> "I know [your sister] told you not to talk to me, I understand…"

[24] And this:

> "Good bye [name of complainant]. C u when you are older…"

[25] And:

> "I don't want to loose [sic] you, beautiful, so if I ever upset you, please tell me…"

[26] The appellant gave evidence. In cross-examination he gave as one of his explanations for the character of these messages that he "saw her like a daughter".

[27] After he had been communicating with the complainant for two months this way, he asked her to give him her password so that he could delete the emails that he had sent. In cross-examination he admitted that he did not want the complainant's mother to find out that he had remained in contact with the complainant.

[28] The jury must have accepted the complainant as a reliable witness generally because they convicted the appellant of count 1, that of maintaining an unlawful sexual relationship with a child under 16 years. Counts 2, 3, 4 and 5 are really particulars of acts committed in the course of that sexual relationship. As is often the case, the Crown selected the first acts in the relationship and the final acts. It can be expected that the first of a series of sexual assaults on a child could generate clear memories or, at least, memories that are relatively clear compared with a child's recollection of all that followed. The same can often be said for the last acts in a series.

[29] The evidence which the complainant gave was clear enough. It was supported by the evidence of her sister. It also gained support from the character of the text messages. However, there were the usual weaknesses in a Crown case of this kind. The complaint was first made late, in 2015. Also, the evidence of the complainant might be regarded as unreliable because of her acknowledgment that it was the product of what she said was a slow realisation based upon recurrent dreams and flashbacks. As she acknowledged to the appellant's son, there were times when she didn't know "if it really happened." The contents of her correspondence with the appellant was capable, on the one hand, of being regarded as evidencing an affection for him that was inconsistent with her later allegations of sexual assault. On the other hand, it was capable of being regarded as the product of his manipulation of her emotions. In particular, his own texts are capable of being regarded as indicating something more sinister than the avuncular relationship that the appellant claimed.

[30] All of these were matters for the jury to determine. None of them rendered her evidence so inadequate to support the charges so as to justify interference by this Court. In *Whitehorn v The Queen*,[1] Dawson J said:

> "In particular, a court of appeal does not usually have the opportunity to assess the worth of a witness's evidence by seeing and hearing that evidence given. Moreover, the jury performs its function within the atmosphere of the particular trial which it may not be possible to reproduce upon appeal. These considerations point to important differences between the functions of a jury and those of a court of appeal. A jury is able, and is required, to evaluate the evidence in a manner in which a court of appeal cannot."

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1 (1983) 152 CLR 657 at 687.

[31] And as Brennan J said in *M v The Queen*, it is a "sad but salutary experience of every counsel for the defence that the prosecution's "weak point" is often brushed aside dismissively by a jury satisfied of the honesty of the prosecution witness."[2]

[32] Nevertheless, there are cases in which the evidence given, even as deduced from the written record, can lead an appellate court to conclude that a reasonable jury should have entertained a doubt about the guilt of the appellant. In *M v The Queen*[3] Mason CJ, Deane, Dawson and Toohey JJ said:

> "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."

[33] *M v The Queen* is itself a good example of the difficulties such cases can raise. It is a case in which, although the majority decided to allow the appeal, the members of that majority nevertheless disagreed about the result of the application of the relevant principles to the facts of the case. *M v The Queen* was a case in which the appellant had been convicted of three counts of indecent dealing with his 13 year old daughter and three counts of rape against her. The complainant had previously made false complaints of sexual assaults against her own sister. She had also made a false complaint against another man. Her complaints had been made late. Expert evidence about the state of the complainant's hymen was conflicting. One doctor had found that the condition of her hymen was inconsistent with penetration; the evidence of the other doctor was that there were no indications one way or the other. As here, there was evidence that, after the alleged offences, the complainant had treated the appellant in a way that was inconsistent with their having been committed. Character evidence was led to support the appellant.

[34] The prosecution case depended upon the evidence of a complainant who had been guilty of making false complaints on previous occasions and who was now giving evidence about having been raped when some of the medical evidence suggested that that was not true. A majority acquitted the appellant. Gaudron J would have ordered a retrial.

[35] McHugh J would have dismissed the appeal. His Honour accepted that the attacks upon the Crown case could not "be lightly dismissed". However, in his Honour's view they were not so destructive of the complainant's credibility as to lead to the conclusion that any reasonable jury must have rejected her outright or, at least, must have been left with a reasonable doubt.

[36] In this matter I am of the opinion that the arguments raised by the appellant on appeal, either taken singly or in combination, do not engender such a doubt about the guilt of the accused as to justify interference with the jury's verdict. They were merely matters affecting credibility of a kind that are usual in cases like this. They were not matters that compelled an acquittal.

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2 (1994) 181 CLR 487 at 507-508.
3 (1994) 181 CLR 487 at 494.

[37] However, the appellant has a second string to his bow. He also contends that there is such an inconsistency between the verdicts of guilty and the verdicts of not guilty as to demonstrate that no jury that had applied its mind to the evidence could have arrived at the different verdicts.[4] The complainant's evidence about the nature of the appellant's acts was clear enough; it gave a graphic picture of what he did to her. Her delay in making a complaint and her continued contacts with the appellant after he ceased his offending raised a question about the reliability of her evidence, but there were also matters that were not inconsistent with the behaviour of children who are victims of sexual assaults. Children can be confused about the nature of their relationship with their attacker and for that reason, and many others, can delay for years telling anybody about what had happened. Many complaints have been prompted by what complainants have described as "flashbacks" or as "dreams". Whether the complainant's recollections were real or unreal and whether she was making a false complaint consciously or unconsciously were all matters for the jury to determine.

[38] The appellant's argument on this ground really resolves to one point. It is said that there is no difference in the quality of the evidence the complainant gave on the counts in respect of which the jury acquitted and the counts in respect of which the jury convicted. It is argued that nothing in the judge's directions to the jury could have justified the differential findings. It is said that there is no greater support for one group of charges than for other groups of charges.

[39] This is an argument that has now become frequent in appeals against conviction in cases of sexual offences where numerous counts are pleaded in the same indictment.

[40] In my respectful opinion it would be a mistake to regard the authorities as establishing that a jury's acquittal of a defendant upon some counts and its conviction upon other counts will demonstrate that there has been a miscarriage of justice if all that is said is that the "quality of the evidence" of a complainant was the same in respect of all counts.

[41] The obligation to establish relevant inconsistencies in verdicts rests upon the person making that submission.[5] The relevant inconsistency is one that results in "an affront to logic and commonsense which is unacceptable and strongly suggests a compromise of the performance of the jury's duty."[6]

[42] *Jones v The Queen*[7] is a case that is often cited to support the proposition upon which the appellant relies in this case. In Jones, a gymnastics instructor had been convicted of three acts of sexual intercourse with a girl who was aged 11 and 12 at the time of the respective offences. The first count on the indictment was alleged to have taken place during weeknight classes held after school hours. The second offence was alleged to have occurred after a Saturday morning class. The third offence was alleged to have taken place at the appellant's home. It was accepted that it was part of the appellant's function to massage the complainant's legs after training. The complainant said that while performing this massage the appellant put his penis into her vagina.

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4 *Osland v The Queen* (1998) 197 CLR 316 at 358 per McHugh J.
5 *MacKenzie v The Queen* (1996) 190 CLR 348 at 368 per Gaudron, Gummow and Kirby JJ.
6 *supra* at 368.
7 (1997) 191 CLR 439.

[43] The complaints were uncorroborated. There had been an unexplained four year delay in making them. In respect of the count which was said to have occurred on a weeknight, the appellant's wife and daughter gave evidence that they invariably attended such training sessions after which the family left in company together. On their evidence there could have been no opportunity for the commission of the offence. The jury acquitted the appellant on this count. In respect of the weekend offence, an assistant coach said that she attended Saturday morning classes and that she travelled home with the appellant after these classes "most of the time". She accepted that there were occasions when she travelled home by train alone. Because of the lapse of time she was unable conclusively to exclude the possibility that an early departure by her alone might have given rise to an opportunity for the appellant to commit the offence. The jury convicted the appellant on that count. The jury also convicted the appellant of the count relating to the offence committed at his home.

[44] By a majority, the High Court allowed the appeal, quashed the convictions and directed that verdicts of acquittal be entered. Gaudron, McHugh and Gummow JJ said that it was implicit in the jury's acquittal on the second count that they had rejected the complainant's accounts of the events which she alleged had occurred. That being so, the finding of not guilty "damaged the credibility of the complainant with respect to all counts in the indictment".[8]

[45] However, that was not the only basis for the result in that case. There was a lack of any corroborative evidence. More importantly, the delay in the making of the complaint had a particular significance beyond its effect upon the credibility of the complainant. It affected the accused's ability to explain his movements on the day of the alleged incident. Relevant to this case, in particular, it affected the ability of the appellant's assistant coach to give incontrovertible evidence about her presence or absence on a particular Saturday. As a consequence, the delay had "the effect of relegating the accused from giving an account of what actually happened to 'what *must* have happened'." (Emphasis in the original.)[9] Therefore, the appellant may have been deprived of an alibi that would have brought about his acquittal.

[46] This factual context rendered the acquittal on one count significant. It meant that the jury's finding on that count made it impossible for them to be satisfied beyond a reasonable doubt of the guilt of the appellant on the other two counts having regard to the additional features in the evidence.

[47] Indeed, in *Jones* itself the Court did not treat the case as one about the significance of inconsistent verdicts. *MacKenzie v The Queen*,[10] the then leading authority on inconsistent verdicts, had been decided in December 1996 yet it was not cited in *Jones* which was decided in December 1997. It must be remembered that in *MacKenzie*, Gaudron, Gummow and Kirby JJ said that where there is some evidence to support the verdict that is said to be inconsistent, it is not the role of the appellate court, upon that ground, to substitute its own opinion of the facts for one which was open to the jury.[11] Their Honours also approved the dictum of King CJ in *R v Kirkman*[12] as follows:

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8 *ibid* at 453.
9 *supra* at 454.
10 *MacKenzie v The Queen* (1996) 190 CLR 348.
11 *supra* at 367.
12 (1987) 44 SASR 591 at 593.

> "[J]uries cannot always be expected to act in accordance with strictly logical considerations and in accordance with the strict principles of the law which are explained to them, and courts, I think, must be very cautious about setting aside verdicts which are adequately supported by the evidence simply because a judge might find it difficult to reconcile them with the verdicts which had been reached by the jury with respect to other charges. Sometimes juries apply in favour of an accused what might be described as their innate sense of fairness and justice in place of the strict principles of law. Sometimes it appears to a jury that although a number of counts have been alleged against an accused person, and have been technically proved, justice is sufficiently met by convicting him of less than the full number. This may not be logically justifiable in the eyes of a judge, but I think it would be idle to close our eyes to the fact that it is part and parcel of the system of administration of justice by juries. Appellate courts therefore should not be too ready to jump to the conclusion that because a verdict of guilty cannot be reconciled as a matter of strict logic with a verdict of not guilty with respect to another count, the jury acted unreasonably in arriving at the verdict of guilty."[13]

[48] In this case, as I have said, the jury must have accepted the complainant as a reliable witness having regard to the guilty verdicts on counts 1, 2 and 3. Counts 2 and 3 alleged offences committed at the inception of the unlawful sexual relationship. The evidence of the complainant about what the appellant did to her was reasonably cogent and clear. It was supported by the evidence of the complainant's sister's own observations. It was also consistent with what the complainant later told her mother. The complainant's delay in making her complaint was explained in the evidence.

[49] The jury acquitted on counts that were alleged to have been the last time that the appellant offended. There were difficulties with the evidence given by the complainant about when those offences were committed. In her police interview, she placed the offending at the end of grade six, in late 2010. She said that the offences happened when she was on school holidays at the end of that school year. Asked later in the interview what had made the offending stop, the complainant said that her mother had started to go out with her year 7 teacher, as a result of which the appellant ceased coming to the house. In contrast, when during the pre-recording of her evidence she was cross-examined about the last occasion of offending, she maintained that it was during the period between the end of year 6 and the beginning of year 7, but said that what brought it to a close was her fracturing both of her elbows. She was put in a collar and cuffs; her mother told the appellant not to visit until she had recovered. There were no other incidents of touching after that time. The issue of timing in relation to the last offending interested the jury. During their deliberations, they sent a note to the judge:

> "Could you clarify the last time the alleged offence occurred, according to [the complainant]?"

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13 *supra* at 367-368.

[50] After hearing submissions from counsel, the learned trial judge gave the following directions:

> "… In terms of the last time the alleged offence occurred, I'll just read two brief passages to you. One is from the conversation [the complainant] has with the police officers in which the question by Senior Constable McDonald is as follows:
>
> > *All right. So just tell me about this happening between that time in – when you think you're in year 4, six months after you've moved in till the last time it happened [indistinct]*
>
> The question in the end is "the last time it happened". Her response is:
>
> > *End of year 6.*
>
> All right. Now, when she comes to court and is asked by the prosecutor in court the following questions, she gives the following answers:
>
> > *On that occasion, you told police that the last time, the accused came into you room, put his hand down your pants and his fingers inside your vagina and sucked your breasts. Do you remember telling police that? --- Yes.*
> >
> > *And you said that it happened at the end of year 6. You'd just gone on school holidays and was about to enter year 7.*
>
> Right. Now, from the times I've given you, the end of year 6 is the end of 2010 because she does grade 7 in 2011. So the time is that school holidays at the end of 2010 or perhaps slightly into 2011. All right."

[51] The jury may well have had a doubt as to whether the complainant actually had a clear recollection of the events which were the subject of counts 4 and 5, an occasion which had been identified only by reference to its being the last instance of offending. Her recall in her police interview that contact ceased and the offending ended when her mother began to go out with her year 7 teacher seemed at odds with her earlier timing of the last offences as occurring in the period before she had commenced year 7; and it was certainly different from her later recall that her elbow injury was responsible for the end of her contact with the appellant. Her mother's evidence, and that of the appellant himself, was that although their relationship had ended, he remained living in the house until both he and the complainant's family moved out in late 2011; which, again, was inconsistent with the complainant's interview recollection of contact ceasing at the end of 2010 or early 2011. The jury may have concluded that the complainant was having difficulty distinguishing a particular set of events in relation to counts 4 and 5, while accepting her account generally as truthful. Her evidence on these counts was less cogent than her evidence on the other counts.

[52] The jury were directed, as usual, that they could acquit on some counts, but, nevertheless, convict on other counts. Such a direction is important, of course, to ensure that the jury does not apply propensity reasoning. The jury was also directed that they were entitled to take into account the effect upon the complainant's credit of an acquittal in relation to one or more counts. If that doubt was based upon a

view of the complainant's reliability, then that had to be taken into account in assessing the reliability of the complainant generally and in relation to the other counts.

[53] It follows from the giving of such directions in trials of multiple offences that a jury's decision to acquit on some but not all counts in an indictment cannot possibly lead, on its own, to a conclusion that there has been such an inconsistency in verdicts as to render the guilty verdicts unsafe or unsatisfactory. Such an outcome can be entirely consistent with a jury's faithful obedience to proper directions. It may be consistent with a conclusion that the complainant was an honest and reliable witness generally but that in respect of a particular charge the evidence as a whole was not evidence upon which the jury was prepared to convict. Indeed, it has been said that in such cases, acquittals may give cause for regret by the Crown, but that they do not give rise to a ground of complaint for a defendant.

[54] For these reasons, in my respectful opinion, the differing verdicts of the jury do not demonstrate that their verdicts of guilty were either unsafe or unsatisfactory.

[55] I would dismiss the appeal.

[56] **FRASER JA:** I have had the advantage of reading in draft the reasons of the President. I respectfully agree with those reasons. In relation to the President's quotation of the dictum of King CJ in *R v Kirkman*[14] I should perhaps make clear my view that this is not a case in which a guilty verdict cannot logically be reconciled with a verdict of not guilty with respect to another count. The reasons of the President persuasively explain that the differing verdicts of the jury are reconcilable, so that any question about the application of King CJ's statement in *R v Kirkman* does not arise for decision in this appeal.

[57] I agree that the appeal should be dismissed.

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14 (1987) 44 SASR 591 at 593.