SUPREME COURT OF QUEENSLAND

CITATION:	*R v Collins* [2016] QCA 198
PARTIES:	**R** **v** **COLLINS, John** (appellant)
FILE NO/S:	CA No 147 of 2015 DC No 434 of 2014
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction
ORIGINATING COURT:	District Court at Brisbane – Date of Conviction: 30 June 2015
DELIVERED ON:	5 August 2016
DELIVERED AT:	Brisbane
HEARING DATE:	13 July 2016
JUDGES:	Gotterson and Morrison JJA and Burns J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Appeal against conviction dismissed.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – VERDICT UNREASONABLE HAVING REGARD TO EVIDENCE – APPEAL DISMISSED – where the appellant was convicted of rape – where the complainant alleged that the appellant raped her on his boat after offering her a job at his motel – where the appellant alleges the complaint is fabricated and that the verdict was unreasonable and unsupported by the evidence – where the prosecution case depended upon acceptance of the evidence of the complainant – where the jury were warned of convicting upon the complainant's testimony alone – whether, upon the whole of the evidence, it was open to the jury to be satisfied beyond reasonable doubt that the appellant raped the complainant *M v The Queen* (1994) 181 CLR 487; [1994] HCA 63, applied *MFA v The Queen* (2002) 213 CLR 606; [2002] HCA 53, applied
COUNSEL:	The appellant appeared on his own behalf G P Cash QC, with D Nardone, for the respondent
SOLICITORS:	The appellant appeared on his own behalf Director of Public Prosecutions (Queensland) for the respondent

[1] **GOTTERSON JA:** On 30 June 2015 in the District Court at Brisbane, the appellant, John Collins, was found guilty of rape. The count on which he was convicted alleged that he raped the complainant, then a 17 year old female person, at Kawana on or about 14 February 1986. The appellant was sentenced on the following day to 12 months' imprisonment to be served cumulatively upon a sentence of 11 years seven months and 14 days that he was currently serving.

[2] The appellant represented himself at the hearing of the appeal. He had represented himself at the trial; however, counsel had been appointed to represent him on a limited basis to cross-examine the complainant, consistently with the provisions of s 21O of the *Evidence Act* 1977 (Qld). Different counsel had represented him at the committal hearing.

[3] On 6 July 2015, the appellant filed a Form 26 in which he has appealed against his conviction and applied for leave to appeal against the sentence.[1] The appeal against conviction is to be heard and determined first.

The appellant's alleged offending

[4] The complainant testified that for about six weeks before the alleged offence, she was living with her aunt at Alexandra Headland. She was 17 years old and looking for work opportunities. She had registered with the Commonwealth Employment Service at Maroochydore. On 12 February 1986, she attended their office, then went to a café for lunch. When she was waiting outside the café, the appellant, whom she did not know, approached her and struck up a conversation.

[5] During the conversation, the complainant told the appellant that she was job seeking as she was new to the area. He said that there was potential work for her at a motel he owned. Arrangements were made for an interview to take place at the motel on the morning of 14 February 1986.

[6] Once the arrangements were made, the appellant suggested that he run the complainant up to the motel to "introduce you to the lady you will be interviewing with". The complainant agreed. They went to the motel, the introduction was made, and shortly thereafter the appellant suggested that he drop the complainant off back at the café but after they had diverted "to grab something from his boat". The diversion took 20 to 30 minutes. During the course of it, the complainant spoke to a man in an office at the marina where the appellant's boat was moored.

[7] According to the complainant's evidence,[2] she attended the motel on the morning of 14 February 1986. The woman to whom she had been introduced directed her to meet the appellant at his boat. The complainant drove to the marina. She located the appellant. He called her onto the boat. She removed her shoes to do so and climbed down a ladder into a hatch. The complainant did not notice anyone else on board.

[8] She and the appellant went into a living area which contained a kitchenette and a curved settee and a table. She sat on the settee. To her recollection, the appellant sat on a chair at an angle to her. Initially, he apologised for bringing her out of her way, saying that someone had tried to do something to the boat. The conversation moved to the sort of work that they would be looking for the complainant to do at the motel.

---

1 AB261-262.

2 AB53-57; Tr1-20 l40 - Tr1-24 l33.

[9] The appellant then mentioned that he was always looking for someone to be a companion to his young son and to do some secretarial work on board when the boat was cruising around the islands off the Queensland coast. The appellant elaborated that the trips were fun with lots of young people and lots of partying. He asked the complainant whether she was interested in that type of work. She said that she was not. She expressed a pointed lack of interest in it when he said that frequently the girls went topless at the front of the boat for a figurehead competition.

[10] The complainant asked for more details about work at the motel. The appellant responded by saying, "[o]kay…that's settled". He got up, went to the kitchenette, opened a bottle of champagne and poured two glasses of it. He offered one to the complainant "to toast [her] new position". After a toast, he insisted that she drink a few mouthfuls. She found the taste bitter.

[11] The appellant kept on talking about cruising. The complainant said that it did not sound like he was offering the kind of motel work she wanted to do and that perhaps this was not "the best fit". The appellant then jumped up, peeled some $50 bank notes from a roll and threw three of them on her bag. He said that it was "an advance… on [her] first pay" and that it would prove that he was not "messing about."

[12] At that point, the complainant was feeling nervous and uncomfortable. She had drunk no more than half of the champagne in her glass. The appellant went to refill his glass. When he returned, he sat next to her on the settee. He said something that made her turn her head and look. As she turned, the appellant used his weight to push her back into the settee and pin her down.

[13] The appellant placed his arm across the complainant and used the other arm to pull aside the underwear under her skirt. She could feel him pushing his penis into her vagina. She asked him what he was doing and requested him to stop. He kept saying that it was "okay". After about five minutes, he withdrew his penis and ejaculated onto the top of her leg. As he was trying to put his penis back into his pants, the appellant shifted his weight. The complainant was able to slide away from him and off the settee. She collected her bag and left the boat as quickly as she could.

[14] The complainant returned to her car.[3] She sat in it for about 10 minutes, disoriented, and with the engine running. She then drove down to the end of Point Cartwright Drive and went to sit on the beach. She remained there until dark.

[15] When she returned to the residence, her aunt was arguing with her partner. The aunt told the complainant that she would have to find somewhere else to stay. That night she stayed with some friends at Maroochydore.

[16] The complainant did not report the events on the boat that day to her aunt or to her friends. She first reported it to Crime Stoppers in 2000.

The course of the trial

[17] The complainant was cross-examined by the appointed counsel. Notwithstanding an assertion that the appellant had not mentioned a trip on a yacht or secretarial work to her on the day they met, the complainant accepted that, in her diary, she had written an entry for 12 February 1986 stating:

---

3 AB57-58; Tr1-24 l39 – Tr1-25 l29.

> "Wants me to go on a 12 month cruise around the Barrier Reef and Fiji etcetera to look after his son. Says he'll pay me $500 a week plus all my spending money. Sounds suss to me, though. He's really gross. See what happens, though."

The complainant conceded that the appellant may have spoken about those matters on that day but that she did not recall the conversation.[4]

[18] Under cross-examination, the complainant rejected a suggestion that she had been given a trial on the switchboard by the woman at the motel on 14 February 1986 and that she had failed it "dismally".[5] She also rejected a suggestion that there was no message for her to see the appellant on the boat.[6]

[19] It was put to the complainant that the appellant did not rape her. She responded: "Mr Collins most certainly did rape me against my will".[7] The complainant also rejected a suggestion put to her that it was clear from photographs that there was insufficient room on the seating arrangements on the boat for the rape to have occurred as the complainant described it.[8]

[20] It was also put to the complainant that she had gone to the boat, lied to the appellant by telling him that she had been given a job at the motel, in a distressed state told him that she was in dire financial circumstances and had been asked by her aunt to move out, and thereby induced the appellant to give her the $150. The complainant denied this although she did accept that she took the $150 with her when she left the boat.[9]

[21] Later, it was put to the complainant that her complaint to police was a lie motivated by a prospect of securing some financial gain from the appellant. The complainant also rejected that suggestion.[10]

[22] The only other witness called in the prosecution case was Detective Senior Constable Heptinstall who investigated the complainant's complaint in 2006 and 2007. He was cross-examined by the appellant.

[23] The appellant did not give evidence himself or call other evidence in his defence. He exercised his right to address the jury.

[24] The learned trial judge summed up to the jury. The summing up included the following observations and directions:

> "So [the complainant] admitted in cross-examination that she'd written that in her diary two days before, which, of course, directly contradicts what she says the conversation was between her and Mr Collins when she first met him and then on the yacht.
>
> You'll recall also in her cross-examination - or in her evidence - [the complainant] admitted that her memory of the events 30 years ago was not 100 per cent. When things were put to her about what she could recall she admitted that her memory was not that good.

---

4 AB67-68; Tr1-34 l11 – Tr1-35 l10.
5 AB68; Tr1-35 ll21-40.
6 AB69; Tr1-36 ll7-12.
7 AB72; Tr1-39 ll1-2.
8 AB73-74; Tr1-40 l34 – Tr1-41 l7.
9 AB70-72; Tr1-37 l10 - Tr1-39 l10.
10 AB73; Tr1-40 ll22-32.

> Another factor is her admission that she did take the $150 with her when she left the yacht. She admitted that she was low on money. She didn't have a full-time job. It looked like she was going to have to find somewhere else to live and was in need of money. And another aspect of her evidence is the - where she says the rape occurred, the way the table and the couch were set up and the physical impracticality of two people having sexual intercourse in such a place.
>
> Another aspect of her evidence was her evidence about when she left the yacht she went and sat in the car for, she said, about 20 minutes because she was - couldn't - didn't trust herself to drive. Her legs were shaking, etcetera. But she then said that she took herself off to, I think, Point [Cartwright] and sat on the beach until dark. Now, you'll recall her evidence that she said one of the reasons she didn't want to drink the champagne was because it was 10.30 in the morning, or that sort of time frame. So you might think that's an awful long time to sit on a beach. And it's a matter for you whether that's an implausibility or not.
>
> Now, as I say, there may well be other aspects of [the complainant's] evidence that you think are significant and you give effect to your own views of her evidence. But it is very important that you do scrutinise her evidence very carefully and consider her evidence when considering all of these other factors when evaluating her evidence. And I do warn you, because of the 30 year delay, it would be dangerous to convict Mr Collins of the offence of rape on her testimony alone, (and it is only her testimony that the prosecution relies upon), unless, after scrutinising her evidence with great care, and bearing in mind all of the relevant circumstances and paying heed to this warning - unless you are satisfied, beyond reasonable doubt, of the truthfulness and accuracy of her evidence."[11]

[25] The jury requested the whole of the evidence of the complainant to be replayed to them. They sought certain redirections. The guilty verdict was delivered after about eight hours deliberation.

The ground of appeal

[26] There is one ground of appeal, namely, that the guilty verdict was unreasonable and unsupported by the evidence.

The appellant's submissions

[27] At hearing of the appeal, the appellant was granted leave to rely upon a 19-page typed submissions document which he had prepared. It superseded the 9-page document he had filed on 14 June 2016. In the document now relied upon by the appellant, the submissions begin at page 4. That page and the several which follow it, provide a factual background.

[28] It need be said at once that the submissions document reflects several misapprehensions on the part of the appellant. Pages 6 to 11 contain extracts from, and submissions based upon, cross-examination of the complainant at the committal hearing in March 2010. However, no documentary evidence of that cross-examination was tendered at the trial; nor was the complainant cross-examined at trial about evidence she had given

---

11 AR 115-116; Summing Up p7 l27 – p8 l14.

at the committal. This part of the submissions document is irrelevant as not based upon evidence at the trial.

[29] Further, pages 11, 12, 17 and 18 contain submissions based on material contained in a written statement given to the police by the complainant dated 12 October 2007. This statement was not adduced as evidence at the trial. Nor was the complainant cross-examined about it.[12] These submissions, too, are irrelevant for the same reason.

[30] Pages 12 and 13 refer to aspects of the summing up, the replaying of the complainant's evidence, and the redirections given. As I have noted, the ground of appeal does not call into question any of those matters.

[31] Page 14 and those that follow cite a number of extracts from the cross-examination of the complainant at the trial and, in most instances, conclude with the appellant's "comment" after the extract. For example, after referring to the complainant's concession concerning the diary entry, the following comment is made:

> "Here [the complainant] admits that there was no discussion other than her getting a position at the Headlands Motel on the 12th February 1986. And John Collins had no idea that she would turn up at the yacht on the 14th February 1986. [The complainant] admits that she was not invited by John Collins to return to the yacht on the 14th February 1986. John Collins never had the address where she was living with her Aunty or her contact phone number. So one can see quite clearly, the only reason she came down to the yacht is because she knew where the yacht was moored. So when [the complainant] didn't get the position at the Headlands Motel she needed money to move out of her aunties residence on that day (14th February 1986). She admits that she had a note from her aunty asking her to leave, therefore she needed an advance on her wages of $150.00. The most time John Collins would have spent in her company would be no more than 15 minutes in total."[13]

[32] It is noteworthy that none of the comments concern the integrity of the complainant's evidence-in-chief concerning the incident itself or her denials of the suggestions that she was not raped and that, physically, the incident could not have happened on the settee.

[33] The submissions document concludes with the following:

> "[The complainant] produced no evidence whatsoever throughout her trials. Everything [the complainant] had to say was hearsay, there was no solid evidence produced by the police either when questioned by Mr John Collins during the trial. There was no DNA produced in evidence nor were there any witnesses produced by [the complainant] or the Crown. John Collins is asking the three Supreme Court Judges to dismiss this case because it is to (sic) stale being thirty years. Had John Collins been accused on the 14th February 1986 he would have been able to produce several witnesses now deceased."[14]

The appellant's oral submissions were elaboration upon those parts of his submissions document which were open to him to rely upon.

---

12 The appellant cross-examined Detective Senior Constable Heptinstall briefly about the statement for the limited purpose of enquiring whether persons mentioned in it had been interviewed by the police: AB91; Tr1-58 ll14-25.

13 At page 19.

14 Ibid.

The respondent's submissions

[34] The respondent referred to the judicial exposition of the statutory ground of appeal that a jury verdict is unreasonable or cannot be supported having regard to the evidence[15] given by justices of the High Court in *MFA v The Queen*.[16]

[35] It was submitted that the complainant's evidence was clear and consistent in relation to the substance of the offending conduct. Her account was not implausible. It was not eroded by cross-examination in any material respect.[17] Moreover, the directions to the jury with respect to scrutiny of the complainant's evidence were comprehensive. In the circumstances, the verdict was neither not supported having regard to the evidence, nor unreasonable.

Discussion

[36] In *M v The Queen*[18] Mason CJ, Deane, Dawson and Toohey JJ discussed the test for unreasonableness or unsupportability of a verdict. Their Honours observed:

> "…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…"[19]

[37] In the same case, their Honours had noted that:

> "Where, notwithstanding that as a matter of law there is evidence to sustain a verdict, a court of criminal appeal is asked to conclude that the verdict is unsafe or unsatisfactory, 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…"[20]

[38] In *MFA*, McHugh, Gummow and Kirby JJ remarked to the effect that it was "not uncommon in most trials" for "some aspects of the evidence [to be] less than wholly satisfactory."[21] Their Honours said in that regard:

> "…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…"[22]

Their Honours observed earlier in their reasons that determination by an appellate court as to the reasonableness of a jury's verdict "involves a function to be performed within a legal system that accords special respect and legitimacy to jury verdicts

---

15 *Criminal Code (Qld)* s 668E(1).
16 [2002] HCA 53; (2002) 213 CLR 606.
17 Respondent's submissions paragraph 23.
18 [1994] HCA 63; (1994) 181 CLR 487.
19 At 494 (emphasis added, footnote omitted); cited by McHugh, Gummow and Kirby JJ in *MFA* at [56].
20 At 493 (footnote omitted); cited by Gleeson CJ, Hayne and Callinan JJ in *MFA* at [25].
21 At [96].
22 Ibid.

deciding contested factual questions concerning the guilt of the accused in serious criminal trials."[23]

[39] Here, the prosecution case depended upon acceptance of the evidence of the complainant. That was made clear to the jury.[24] As the passage cited from the summing up reveals, the jury was properly directed to examine the complainant's evidence with great care before arriving at any conclusion of guilt. The learned trial judge referred the jury to reasons giving rise to the need for such care. Her Honour warned the jury that having regard to the 30 year delay between the alleged events and the trial, it would be dangerous to convict upon the complainant's testimony alone unless, having scrutinised it with great care, considered the circumstances relevant to the evaluation of it, and having paid heed to the warning given, the jury was satisfied beyond reasonable doubt as to the truth and accuracy of the testimony.

[40] I accept the respondent's submission that the complainant's evidence was clear and consistent with respect to the substantive aspects of the appellant's alleged offending conduct. The hypothesis that it was physically impossible for the conduct to have occurred, rejected by the complainant, was not developed beyond speculation.

[41] The uncertainty revealed in cross-examination in the complainant's recollection as to whether, on 12 February 1986, the appellant had mentioned an opportunity for working on his boat and looking after his son, did not go directly to the elements of the offence. It concerned an ancillary matter. The jury might well have regarded uncertainty as to such a matter as attributable to the passage of about 30 years and of little relevance to the reliability of the evidence of the offending conduct.

[42] The attribution to the complainant of a purpose of obtaining money from the appellant by a lie, also rejected by the complainant, was apt to be viewed by the jury as flimsily drawn from the fact that the complainant took the $150 with her. That the money on her handbag was taken was credibly explained by the haste with which she left the boat.

[43] Lastly, the time which the complainant spent sitting on the beach, which is capable of being viewed as being a long time, could well have been regarded by the jury as explained by her distress and her young age. That she did not immediately complain to her aunt was the subject of rational explanation.

[44] In my view, the jury were entitled, on the evidence of the complainant, to accept her account of penile rape by the appellant. Their verdict was neither unreasonable nor unsupported by the evidence. This ground of appeal fails. The appeal against conviction must be dismissed.

Order

[45] I would propose the following order:

1. Appeal against conviction dismissed.

[46] **MORRISON JA:** I have read the reasons of Gotterson JA and agree with those reasons and the order his Honour proposes.

[47] **BURNS J:** I agree that the appeal must be dismissed, for the reasons expressed by Gotterson JA.

---

23 At [59].

24 AB111: Summing Up page 3 ll13-15.