SUPREME COURT OF QUEENSLAND

CITATION:	*R v Baird* [2008] QCA 338
PARTIES:	**R** **v** **BAIRD, Cameron Evan** (appellant)
FILE NO/S:	CA No 123 of 2008 DC No 224 of 2008
DIVISION:	Court of Appeal
PROCEEDING:	Appeal against Conviction & Sentence
ORIGINATING COURT:	District Court at Ipswich
DELIVERED EX TEMPORE ON:	30 October 2008
DELIVERED AT:	Brisbane
HEARING DATE:	30 October 2008
JUDGES:	McMurdo P, Keane JA and McMeekin J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. Appeal against conviction allowed** **2. Verdicts of guilty set aside** **3. Re-trial ordered**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS – MISDIRECTION AND NON-DIRECTION – WHERE GROUNDS FOR INTERFERENCE WITH VERDICT – PARTICULAR CASES – WHERE APPEAL ALLOWED – appellant found guilty of one count of indecently dealing with, and one count of attempted rape of, an intellectually impaired person – prosecution relied on lies told by appellant in police interviews to suggest a consciousness of guilt – trial judge did not particularise the lies for the jury – respondent conceded trial judge erred in that respect and that appeal should be allowed *Criminal Code* 1899 (Qld), s 216 *Edwards v The Queen* (1993) 178 CLR 193; [1993] HCA 63, distinguished

COUNSEL:	A M West for the appellant D L Meredith for the respondent
SOLICITORS:	Walker Pender for the appellant Director of Public Prosecutions (Queensland) for the respondent

THE PRESIDENT: The appellant was charged with two counts of indecently dealing with an intellectually impaired person, (counts 1 and 2) rape (count 3) and attempted rape (count 4). He pleaded not guilty to all counts on 21 April 2008 in the Ipswich District Court. After a six day trial, he was found guilty on counts 2 and 4 and not guilty on counts 1 and 3.

He was sentenced to 4 years imprisonment on count 4, and 12 months concurrent imprisonment on count 2. His parole eligibility date was fixed after two years on 29 April 2010.

He appeals against his conviction contending that the judge erred first, in allowing the record of interview with the appellant with police to be led in evidence; second, in failing to adequately direct the jury on the use to be made of lies said to have been told by the appellant; and third, in failing to adequately direct the jury on the exculpatory provisions of s 216 *Criminal Code* 1899 (Qld).

His counsel in this appeal, Mr A West, now no longer contends that the guilty verdicts were unsafe and unsatisfactory. The appellant also applies for leave to appeal against his sentence contending that it was manifestly excessive.

In the end, it is only necessary for this Court to deal with one of the grounds for appeal against conviction. Mr Meredith, who appears for the respondent in this appeal, rightly and properly concedes that the trial judge erred in not outlining for the jury in his direction on lies, the specific lies which the prosecution contended could be relied on to demonstrate a consciousness of guilt.

The judge's directions on lies did not comply with the parameters set by the High Court in *Edwards v The Queen* (1993) 178 CLR 193; [1993] HCA 63. Neither the judge in his directions to the jury, nor the prosecutor in his final address to the jury, identified what, in the appellant's rambling record of interview with police, was said to have been a lie from which the jury should infer a consciousness of guilt.

But this was not a case in which the jury should have been given an *Edwards* type direction at all. If the jury considered the appellant was telling lies in the record of interview, this could only have affected his credibility. The lies did not demonstrate a consciousness of guilt.

What is even more problematic is that there was a real danger from the judge's directions that the jury might, themselves, seek to identify lies and draw adverse conclusions from them in an uninformed and impermissible manner.

In these circumstances, Mr Meredith's concession is well made. The appeal against conviction must be allowed, and the verdicts of guilty set aside and a re-trial ordered.

It is unnecessary to resolve the remaining grounds of appeal against conviction. Whether the record of interview is admitted in a re-trial, and any potential defences the appellant may have, will be matters for determination at any re-trial. The prosecution may, however, elect not to pursue a re-trial in light of the six months the appellant has already served in custody. But that, of course, is a matter for the prosecution.

It is also unnecessary for this Court to resolve the application for leave to appeal against sentence, but it must be noted that in view of the psychiatrist, Dr Beech's assessment of the appellant's limited intellectual capacity, the sentence imposed does appear excessive.

KEANE JA: I agree.

McMEEKIN J: And I agree.

THE PRESIDENT: The appeal against conviction is allowed. The verdicts of guilty are set aside, and a retrial is ordered.