

SUPREME COURT OF QUEENSLAND

CITATION: *R v NAH* [2026] QCA 140

PARTIES: **R**
v
NAH
(applicant)

FILE NO/S: CA No 105 of 2026
DC No 399 of 2022

DIVISION: Court of Appeal

PROCEEDING: Subsequent Appeal Leave Application

ORIGINATING COURT: District Court at Townsville – Date of Conviction:
28 October 2022 (Lynham DCJ)

DELIVERED ON: Date of Orders: 22 July 2026
Date of Publication of Reasons: 28 July 2026

DELIVERED AT: Brisbane

HEARING DATE: 22 July 2026

JUDGES: Brown JA, Bradley JA, Freeburn J

ORDERS: **Date of Orders: 22 July 2026**

- 1. Leave to make a subsequent appeal under s 671AC(2) of the Criminal Code against the appellant’s conviction on counts 2 and 10 is granted.**
- 2. The subsequent appeal is allowed.**
- 3. The convictions on count 2 and 10 of the indictment are set aside.**
- 4. There be a new trial on counts 2 and 10 of the indictment.**
- 5. The appellant is granted bail on the conditions of the draft order as amended.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS OF APPEAL – FRESH EVIDENCE – AVAILABILITY AT TRIAL, MATERIALITY AND COGENCY – MATERIALITY AND COGENCY – EVIDENCE DIRECTED TO CREDIT – where the applicant seeks leave to make a second appeal against his convictions on the ground that there is fresh and compelling evidence – where the fresh evidence could have affected the jury’s assessment of the complainant’s evidence had it been available at trial – where the respondent accepts that the

absence of the fresh evidence at trial resulted in a miscarriage of justice – whether a new trial should be ordered

Criminal Code (Qld), s 671AB, s 671AC, s 671AE, s 668E

COUNSEL: G M McGuire KC for the applicant
D Kovac for the respondent

SOLICITORS: Purcell Taylor Lawyers for the applicant
Director of Public Prosecutions (Queensland) for the respondent

[1] **THE COURT:** On 22 July 2026, at the conclusion of the hearing, the Court made the following orders:

1. Leave to make a subsequent appeal under s 671AC(2) of the Criminal Code against the appellant's conviction on counts 2 and 10 is granted.
2. The subsequent appeal is allowed.
3. The convictions on count 2 and 10 of the indictment are set aside.
4. There be a new trial on counts 2 and 10 of the indictment.
5. The appellant is granted bail on the conditions of the draft order as amended.

[2] These are the reasons those orders were made.

[3] The applicant sought leave to make a second appeal against his convictions for maintaining a sexual relationship with a child between 22 May 2001 and 1 May 2003 (**count 2**) and common assault of the same child between 22 May and 31 December 2008 (**count 10**), on the ground that there is fresh and compelling evidence.

[4] The respondent did not oppose the grant of leave.

[5] The respondent accepted that the evidence is fresh. The trial ended on 28 October 2022. The complainant gave evidence at the trial, but did not give this fresh evidence. The fresh evidence was given on 20 March 2026. It could not have been adduced by the defence at the trial, even with the exercise of reasonable diligence.¹

[6] The respondent accepted that the fresh evidence is compelling. It consists of the complainant's own account of conduct, including some conduct the subject of allegations made before the jury at the trial. Its authenticity is not in dispute. It is reliable because of its source. It is important because it is the complainant's account of relevant conduct the subject of or relating to the allegations. It could be highly probative because it is the evidence of the complainant about what she says she saw occur.

[7] The fresh evidence includes new allegations involving the applicant and the complainant's mother, including an allegation of joint offending by her mother with the applicant and allegations of offending by the complainant's mother alone. The complainant's evidence was critical at the trial. Her mother also gave evidence that

¹ *Criminal Code* (Qld), s 671AB (2).

gave some support to the complainant's evidence. Had the fresh evidence been adduced at the trial, it would have informed the cross-examination of the complainant and could have become the subject of address to the jury on the reliability, consistency and completeness of the complainant's account of the applicant's alleged offending. In this way, the fresh evidence could have affected the jury's assessment of the complainant's evidence.

- [8] The nature and detail of the fresh evidence, combined with its emergence from the complainant after the trial, presented the prospect that, had the fresh evidence been adduced at the trial, there is a significant possibility that, considering the fresh evidence together with the other evidence given by the complainant at the trial, the jury might not have been satisfied beyond reasonable doubt of the applicant's guilt on each of the two counts. The respondent accepted that the absence of the fresh evidence at the trial resulted in a miscarriage of justice.²
- [9] In the circumstances, leave was granted, the subsequent appeal allowed, and the convictions set aside on counts 2 and 10.³
- [10] The parties remained at odds about the other relief this Court should order.
- [11] The complainant has not resiled from the evidence she gave at the trial about the applicant's alleged conduct. She has not been cross-examined about the fresh evidence or about how she came to provide it some years after the trial. She has not been cross-examined about the evidence she gave at the trial by counsel with knowledge of the fresh evidence. At the present time, the Court could not conclude that a reasonable jury, properly instructed, considering the whole of the evidence, including the fresh evidence, could not be satisfied beyond reasonable doubt of the applicant's guilt on either count.
- [12] So, the Court ordered a new trial at which the complainant's evidence may be tested.
- [13] The applicant sought bail on conditions that the respondent did not oppose. Bail was granted on those conditions, relevantly including that the applicant have no contact with the complainant or the complainant's mother.

² Code, s 668E(1).

³ Code, s 671AE(1).