

SUPREME COURT OF QUEENSLAND

CITATION: *R v DCZ* [2026] QCA 162

PARTIES: **R**
v
DCZ
(appellant)

FILE NO/S: CA No 195 of 2025
DC No 778 of 2024

DIVISION: Court of Appeal

PROCEEDING: Appeal against Conviction

ORIGINATING COURT: District Court at Cairns – Date of Conviction: 29 July 2025
(Treviño KC DCJ)

DELIVERED ON: 1 September 2026

DELIVERED AT: Brisbane

HEARING DATE: 29 May 2026

JUDGES: Bond JA, Boddice JA, Brown JA

ORDER: **The appeal be dismissed.**

CATCHWORDS: CRIMINAL LAW – APPEAL AND NEW TRIAL – VERDICT UNREASONABLE OR INSUPPORTABLE HAVING REGARD TO EVIDENCE – APPEAL DISMISSED – where the appellant was convicted by jury of two counts of indecent treatment of a child under 16, under 12, who was a lineal descendant (counts 1 and 3) and a *nolle prosequi* was entered by the Crown in relation to a further count of indecent treatment of a child under 16, under 12 who is a lineal descendant (count 2) – where the appellant contends that the child recanted her evidence about the acts the subject of count 2 – where the appellant further contends that other parts of the child’s evidence were contradicted by other witnesses – where the child did not recant her evidence but could not remember count 2 – where the child’s evidence was consistent in many respects – whether the verdicts of guilty were unreasonable or insupportable having regard to the whole of the evidence

CRIMINAL LAW – APPEAL AND NEW TRIAL – PARTICULAR GROUNDS OF APPEAL – MISDIRECTION AND NON-DIRECTION – PARTICULAR CASES – WHERE APPEAL DISMISSED – where the grandmother of the complainant gave evidence as to the timing, location and possibility of the offending – where the offending could not have occurred based off the grandmother’s evidence – where the grandmother had been married to the appellant for over

50 years – where the trial judge did not direct the jury that the jury needed to reject the evidence of the grandmother to convict the appellant – whether the failure to give a direction in those terms caused a miscarriage of justice

CRIMINAL LAW – APPEAL AND NEW TRIAL – PARTICULAR GROUND OF APPEAL – CONDUCT OF PROSECUTOR OR PROSECUTION – where the appellant contends that the prosecutor invited the jury to conclude that the grandmother was a perjurer in the prosecution’s closing address – where there was no assertion by the prosecution that the grandmother had perjured herself – where the appellant further contends that the prosecutor invited sympathy for the child complainant in the closing address – whether the remarks of the prosecutor in the closing address realistically affected the jury’s reasoning to guilt of the offence occasioning a miscarriage of justice

CRIMINAL LAW – APPEAL AND NEW TRIAL – MISCARRIAGE OF JUSTICE – PARTICULAR CIRCUMSTANCES NOT AMOUNTING TO MISCARRIAGE – MISDIRECTION OR NON-DIRECTION – where the child complainant told her father’s partner a version of events when asked what she had told the grandmother – where the question was not limited to what she had told the grandmother – where the trial judge directed the jury that the evidence from the father’s partner could be used as preliminary complaint evidence – whether the evidence of the father’s partner amounted to a preliminary complaint

Brawn v The King (2025) 99 ALJR 872; [2025] HCA 20, applied

Dansie v The Queen (2022) 274 CLR 651; [2022] HCA 25, applied

Pell v The Queen (2020) 268 CLR 123; [2020] HCA 12, applied

R v AW [2005] QCA 152, applied

R v MEZ [2026] QCA 44, distinguished

COUNSEL: J R Jones, with J B Reeves, for the appellant
C M Cook for the respondent

SOLICITORS: Whitlam Criminal Lawyers for the appellant
Director of Public Prosecutions (Queensland) for the respondent

- [1] **BOND JA:** I agree with the reasons for judgment of Boddice JA and with the order proposed by his Honour.
- [2] **BODDICE JA:** On 29 July 2025, a jury found the appellant guilty of two counts of indecent treatment of a child under 16, under 12, who was a lineal descendant.
- [3] On the same date, the appellant was sentenced to a head sentence of 2 years’ imprisonment, suspended after 9 months for an operational period of 3 years.

- [4] The appellant appeals his convictions on the following grounds:
- “1. The verdicts are unreasonable or cannot be supported having regard to the whole of the evidence.
 2. The learned trial judge misdirected the jury by omitting to tell the jury that it needed to reject the evidence of [the grandmother] beyond reasonable doubt.
 3. A miscarriage of justice was occasioned by the prosecutor impeaching his own witness, [the grandmother].
 4. A miscarriage of justice was occasioned because the prosecutor invited the jury to engage in sympathy reasoning.
 5. The learned trial judge misdirected the jury in respect of the use which could be made of hearsay evidence, namely, that it could amount to preliminary complaint evidence.”

Indictment

- [5] The indictment presented in the District Court charged the appellant with three counts of indecent treatment of a child under 16, under 12, who was a lineal descendant. The child in each count was the appellant’s granddaughter. Each count was alleged to be a domestic violence offence.
- [6] Count 1 alleged that on a date unknown, between 31 May 2023 and 1 August 2023, the appellant unlawfully permitted himself to be indecently dealt with by a child under 16, who was under 12 years of age and, to his knowledge, his lineal descendant.
- [7] Count 2 alleged that on 5 December 2023, the appellant unlawfully permitted himself to be indecently dealt with by a child under 16 years who was under 12 and, to his knowledge, his lineal descendant.
- [8] Count 3 alleged that on 5 December 2023, the appellant unlawfully and indecently dealt with a child under 16 years who was under 12 years and, to his knowledge, his lineal descendant.
- [9] Count 1 was particularised as having taken place in a bedroom. It was alleged that the appellant placed the child’s hand in his pants and that the child’s hand touched the appellant, skin on skin.
- [10] Count 2 was alleged to have occurred in a pool. It was alleged that the appellant placed the child’s hand in his pants, with the child’s hand touching the appellant, skin-on-skin.
- [11] Count 3 was alleged to have occurred in the pool at the same time as count 2. It was alleged that the appellant placed his hand inside the child’s bikini bottoms and touched the area of her vagina.

Trial

- [12] At the commencement of the appellant’s trial, the Crown indicated that it would not proceed in respect of count 2. The Crown agreed to enter a *nolle prosequi* in relation to it, in the presence of the jury.

- [13] Consistent with that indication, the appellant was arraigned on counts 1 and 3 only of the indictment. After he entered pleas of not guilty to each of those counts, the Crown entered a *nolle prosequi* in respect of count 2 on the indictment. The appellant was discharged in respect of that count. The jury was then empanelled, and the appellant was placed in charge of the jury.
- [14] The Crown called six witnesses. The child and her brother gave evidence which was pre-recorded and played to the jury. The remaining witnesses, being the appellant's wife, son, the son's partner and a police officer, were called in person.
- [15] At the end of the Crown case, the appellant elected to neither give nor call evidence.

Evidence

Child

- [16] The child's evidence comprised two statements taken by police and tendered pursuant to s 93A of the *Evidence Act 1977* (Qld) (**the Act**), together with evidence which was pre-recorded and played to the jury pursuant to s 21AK of the Act.
- [17] In the first statement, given on 6 December 2023, the child told police that she was currently eight years of age and in grade 3. The child said that she had come to talk to police because she had been playing in the pool with the appellant and when her grandmother went for a shower, the appellant put her hand down his pants and when she moved away, the appellant pulled her back and put his hand down her pants. The child said that she told her grandmother, but the grandmother said, "... that's not true, I know your pop better than you do, I don't believe that, it's not funny 'cause you're splashing around with him ...". The child said that she was speechless when the grandmother told her that she was lying.
- [18] The child said when her father arrived home, her grandmother was yelling that he needed to speak to the child. The grandmother said that the child was going with the appellant and the grandmother to a beach the following day. The child said she was not going to the beach. The child said her brother started swearing at the grandmother to protect the child. The child said after going to her bedroom with her brother, she told the father's partner what happened. Her brother had the pillow over his ears so he could not hear. The child then told her father. Those conversations occurred the day before she came to speak to police.
- [19] The child said when the appellant put her hand down his pants, he told her to move it around, like a massage. Her hand remained in his pants for about five seconds. She felt two lumps, but did not know what they were. They felt squishy. When the appellant put his hand down her pants, she could feel him touching her vagina. He was moving his hand around. When asked whether at any point any of his hand went into her vagina, the child said, "Like for one --- millisecond. Like one millisecond it went in" and she moved away, straight away. The child said that she told the appellant that she was getting out of the pool to have a shower.
- [20] When asked whether anything had happened before with the appellant, the child said, "He's done it to me before, I was like I have to figure out is I don't want like I didn't think like he would do it again but he, if he did it again I would definitely tell, I would go tell everyone like yeah." The child said it first happened when she was sleeping

in her father's bed, one afternoon whilst she was on holidays. She thought it was about term 2 or term 3 of her school year. The appellant came into the room before the child helped build a trolley. On this occasion, the appellant did not put his hand down her pants. He took the child's hand and put it down his pants. Her brother was at the house, as was her grandmother. Her father was at work. The child said the father's partner may have been at her own house that day.

- [21] The child said the appellant came in under the sheets, grabbed her hand and put it down his pants. She said the appellant woke her up. Her hand was down his pants for about five seconds. She could feel skin and lumps, "the same thing" as the other occasion. The child said she pulled her hand away. Later, they built the trolley together. Her brother was in his room playing the Xbox. The child said she did not tell anybody what had happened on that occasion, but after it happened a second time, she told the grandmother straight away.
- [22] In the second statement given on 27 February 2025, the child said that she had remembered something else about the trolley time. She said after the appellant put her hand down his pants, the appellant tried to put her on top of him, twice. The appellant used two hands to grab her around her hips. She ended up lying down on her stomach on top of him. The child said that when she got up, the door was locked. The child had not noticed the door was locked until she tried to open it.
- [23] In evidence, given on 14 March 2025, the child, now in year 5 and aged 10, confirmed that what she had told the police in each of her statements was true. The child said that on the trolley time, when she and the appellant were in the bedroom, the door was shut. The child remembered the appellant locking it, after he had put her hand into his pants and after he had put her on top of him. The child said, in relation to the pool time, that she was in the pool with the appellant and her grandmother for about 20 or 30 minutes. When the appellant put her hand in his pants, she felt two little lumps. She felt the same thing on the trolley time; two little circles.
- [24] The child said she told her father's partner that the appellant "touched in my private part", when she was in the pool with the appellant, but after her grandmother had left the pool. When she spoke of "private parts", she used the word "vagina". The child told her father that the appellant "touched me in my, like, vagina when I was in the pool". She also told her father that the first time the appellant touched her in her private part was when they built the trolley.
- [25] In cross-examination, the child accepted that her grandmother was loving and kind and that on occasions she would tell the grandmother lies. She agreed that the appellant and her grandmother were strict and would say "no" when she wanted something. The child did not agree that when the grandmother was helping her build the trolley, the appellant was in the kitchen doing some paperwork. The appellant helped build all of the trolley. After the trolley was finished, the child went outside to play cards with the appellant and her grandmother. Her brother came out from his bedroom and had a turn or two. The child said she could not remember going shopping with the appellant and her grandmother earlier that day. She did not accept that she did not have a sleep that afternoon.
- [26] The child said that the day before the pool time, she got into the pool with the appellant and her grandmother. She did not agree that she grabbed the appellant's chest area on that day. She denied making jokes to the appellant that day which

caused her grandmother to get cross. She remembered splashing the grandmother as a joke. The child agreed that on the morning of the pool incident, she went to a zoo with the appellant, her grandmother and her brother. She agreed that when she was in the pool that day, she was having fun. She said she was enjoying swimming with them until the appellant touched her. She denied that the appellant and her grandmother got out of the pool together. When it was put to the child that the appellant did not grab her hand and put it down his pants, the child said, “I only remember him putting his hand down my pants.” The child said the appellant did grab her hand and put it down his pants on the trolley day.

- [27] The child agreed that when she went into the house to tell her grandmother, she did not see the brother. The child said she knocked on the bathroom door. When the grandmother opened the door, the child said, “I have something to tell you”, and said, “[The appellant] touched my V.” Her grandmother replied, “That’s enough ... There is no need for this.” The grandmother also said, “You were just splashing around with him yesterday and swimming with him and me just now. Um – don’t say such lie.” The child agreed that at this time, her father’s partner was inside the house having a sleep. The child agreed that she trusted her father’s partner.
- [28] The child said after her father came home and they had dinner, there was a discussion about driving to the beach the next day. The child agreed that she said, “I’m not going. I want to stay here” and that her grandmother said, “That’s enough”. The child said the grandmother was yelling at her, so the child went to her bedroom. The child said when the child’s brother went to go with the child, the grandmother pulled him back and said, “You’re staying here.”
- [29] The child agreed that about two weeks before the trial, she had told the prosecutor that the appellant had tried to pull her onto him twice, during the trolley incident. The child went to speak to police again after that discussion. She accepted that when, in evidence, she told the prosecutor that the appellant had got off the bed and locked the door, that was the first time she had told anyone that the appellant had got out of bed to lock the door. She denied that was because it did not happen.
- [30] In re-examination, the child said that the lies she would tell her grandmother were not bad lies. It would be “like, I did take maybe one lolly but – um – I would say – ‘Oh, no I didn’t. I didn’t take a lolly’”. The child said that on the day of the pool incident, the appellant and the child remained in the pool alone for about 10 minutes after the grandmother got out of the pool to have a shower. She agreed that on that occasion, the appellant only put his hands down her pants. The child said that she had not told anyone about the appellant getting up off the bed to lock the door, because she had only remembered that the previous day.

Brother

- [31] The child’s brother’s evidence comprised a statement taken by police and tendered pursuant to s 93A of the Act and evidence which was pre-recorded and played to the jury, pursuant to s 21AK of the Act.
- [32] In the statement given on 8 December 2023, the child’s brother said that he was talking to police about an incident that happened between the child and the appellant. He said he did not see what actually happened. The child wanted to go for a swim, in the pool. He went back inside the house to play a game. When he was making himself some toast, he saw his grandmother come out of the pool. About 10 or

15 minutes later, when he went to get a drink, he saw the child getting out of the pool. He then heard the child talking to his grandmother. The tone of voice was like the child was annoyed and the grandmother was upset with the child. Just before they finished their conversation, which went on for five or 10 minutes, the appellant walked into the house.

- [33] The brother said when he saw the child get out of the pool, the child's facial expression looked like she had had enough after a long day. It was not normal. She looked a bit sick almost. The child went to the grandmother as soon as she came into the house. It was a few minutes later when he heard the door open and the appellant come into the house. The appellant was drenched and looked exhausted, like they had been having a crazy splash contest. At that stage, the father's partner was asleep in the house. Their father was still at work.
- [34] The brother said after they had dinner, the grandmother asked to speak to the father. The grandmother was angry. The grandmother said that the child had that day said something really terrible. The father asked to talk privately, but the grandmother said "no" and went crazy, slamming her fist on the couch. At that point, the child got up, but the grandmother said, "no you will come back here". The child told the grandmother that she hated her and yelled back at her. The grandmother said, "see this is how terrible your daughter is".
- [35] The brother said when he followed the child into her bedroom, the grandmother said, "oh you're going in now". The brother lay down on the bed beside the child. The child said she did not want to talk about it. The father's partner then came in and asked what happened. The child asked the brother to put a pillow over his head or leave the room. The brother said he was not walking out with his grandmother having a temper, because she is so aggressive. He put the pillow over his head and sang random songs while the child spoke to the father's partner. After three or four minutes, he was told he could take the pillow off his head. The father then came into the room. The child asked the brother and the father's partner to leave.
- [36] In evidence, pre-recorded on 14 March 2025, the brother said that he was now 13 years of age and in year 8. He confirmed that everything he had told police in his statement was true. The brother recalled a day when the child had put a trolley together. That day, the brother and the child had gone to see a movie with the appellant and their grandmother. He was not sure when the child put the trolley together or who she did it with and could not remember the appellant doing work on the kitchen table that afternoon. He said the child did not have a sleep in the bedroom being used by the appellant and the grandmother that afternoon.
- [37] The brother said that on the first day of seeing his grandparents, they visited a zoo. When they returned home, the brother went into the bedroom to have a sleep. When he could not fall asleep, he went into the study to play his game. The brother accepted that prior to speaking to police, he had been told by his father that the appellant had touched the child, in the pool. The father did not say that it was when the child and the appellant were in the pool on their own. He denied that he told police that the appellant came in after the child because he was told that by somebody.

Father's partner

- [38] The father's partner gave evidence that she had been in a relationship with the child's father since July 2022. On 5 December 2023, she arrived home from work at around

3.15 pm. The child's brother was in his room. The child, the appellant and the grandmother were all in the pool. She went inside the house to have a sleep. She awoke at between 5.30 pm and 6.00 pm and put on her swimwear to go in the pool. When she went outside, she saw the child sitting on the couch. The child said nobody was swimming anymore. She went back into the bedroom and changed and went outside to join the appellant and the grandmother for a catch up. She did not spend very long with them. At that stage, the father was still at work.

- [39] The father's partner said the father returned home at about 8.00 pm, with dinner. The father signalled to his parents to come inside, but they signalled him away. The child and her brother were then told to get dinner, but the child declined, saying she wanted to eat in the lounge. The appellant and the grandmother then came in to obtain some dinner and went back outside to eat. After dinner, the father, the child, her brother and the partner watched a movie together. They were about half an hour into the movie when the appellant and the grandmother came into the living room and started an argument around plans for the following day. The child said she did not want to go to the beach with them. The grandmother told the child that she would do what she was told and would come with them. The child then got extremely upset. At that point, the father, the grandmother and the appellant began arguing and the father told the children to go to their room.
- [40] The father's partner said she followed the children to make sure they were okay. She asked the child, who was extremely and unconsolably upset, what that was all about. The child replied, "It's because I told her something this afternoon." The father's partner asked the child, "Well, do you want to tell me?" The child said, "Yes, but I don't want [the brother] to hear." The father's partner asked the brother to go out of the room. The brother said that he would put a pillow over his head to cover his ears. When he did so, the child said that when the grandmother got out of the shower, she had told the grandmother, "... that I was in the pool with [the appellant] ... and [the appellant] put my hand down his pants and then he touched my vagina." The father's partner said that she responded, "I believe you. You're safe." The father's partner then told the child that she would have to tell her father. The child asked if she could tell the father. She agreed and left the room.
- [41] In cross-examination, the father's partner agreed that the child told her that the appellant put her hand down his pants when in the pool and that the child had made it very clear that she did not want to go to the beach with the grandparents. She also agreed that the night before she had had a conversation with the child about using her iPad. The child denied being on her iPad. The father's partner knew that to be a lie.

Grandmother

- [42] The grandmother gave evidence that she had been married to the appellant for over 50 years. There were three children from that marriage. In July 2023, she and the appellant travelled to North Queensland to look after the child and her brother. Whilst there, they took the children to see a movie. When they returned that afternoon, the appellant used his computer to do some work on the dining room table. After he removed the computer from the room they were staying in, she locked the door to that room. She liked the door to be locked because the room was adjacent to the kitchen and she did not want vermin coming into the room. The child's brother went into his room. The child said she was going to do some drawings in the study. In that study, the child had some boxes that contained a trolley that needed to be built. The

grandmother offered to put it together with the child. They finished building the trolley at about 4.00 pm. The appellant was not involved in building the trolley, other than putting on the wheels. The appellant remained at the dining room table.

- [43] The grandmother said that they looked after the children again in the school holidays in December 2023. Whilst there, they went to a zoo. The children fell asleep in the car as they drove home. When they returned home, they had some lunch and the child went off to watch TV. The brother went to his room to play a game. The grandmother said she asked the appellant whether he wanted to go for a swim. Initially, it was only the grandmother and the appellant in the pool. About an hour after they had entered the pool, the child entered into the pool. After 20 or 30 minutes, the father's partner arrived home. She spoke to them briefly. The partner then directed her conversation to the child. She was quite angry with the child. The partner then went back inside.
- [44] The grandmother said after about another 15 minutes, she got out of the pool. The appellant was right behind her. The child remained in the pool. The grandmother then went inside the house. She could see the child still swimming in the pool. The appellant was standing outside of the pool. The grandmother had a quick shower, "No more than 53 seconds, give or take five." The grandmother said she timed herself when she returned home to Brisbane. She initially told the police that she had showered for about two minutes. The grandmother said after she had dried herself, she heard a knock at the door. The child came into the bathroom and said, "I want to tell you something". The child said, "[the appellant] touched me". The grandmother replied, "Well, that didn't happen". The child said, "No. [The appellant] touched me". The grandmother said, "Look, that's enough of that nonsense. That didn't happen." The grandmother said the child did not say anything further and left the room.
- [45] Later that night, after the child's father returned home with dinner, there was a discussion about what they were going to do the next day. The child started yelling that she did not want to go anywhere. The grandmother said, "That's enough ... You'll do as you're told. That's enough of the nonsense." The child continued to yell, before running off to her room. The child's father ran off to the bedroom, followed by his partner and then the child's brother. The grandmother and the appellant left the house that night.
- [46] In cross-examination, the grandmother said that on the day that she put the trolley together with the child, the child did not have a sleep in the bedroom used by the grandmother and the appellant. The grandmother kept the door to that room locked. The child also did not have a rest in any other rooms that afternoon. The grandmother said that during the father's partner's conversation with the child, when the grandmother and the appellant were in the pool together, the father's partner was angry because the child had kept them up until 2.30 am the night before, playing on her iPad. The child was saying she was not on the iPad.
- [47] The grandmother said that after getting out of the pool that day, she did not see the brother. She did not say to him that she was getting splashed in the pool. The grandmother said the conversation with the child in the bathroom was brief. There was no shouting. The grandmother said she had seen the appellant get out of the pool. She had been in the pool with them the whole time.
- [48] The grandmother said that in December 2022, the child had tried to pull a sarong off the appellant. The child said to the grandmother, "I have something to tell you. [The

appellant] doesn't have shorts under the sarong". The grandmother said she knew that the appellant had shorts on. The grandmother also said that on the day prior to the pool time in December 2023, the child and her brother went swimming with the grandmother and the appellant. Whilst they were having fun, the child grabbed the appellant's chest area and squeezed very hard on his left breast. The child said something like, "Baby, baby, I want to suck you". The grandmother told her to stop, as did the appellant. When the child again sang "baby, baby" in a very baby voice, the appellant said, "stop" and the grandmother said "That's enough ... That's enough of the nonsense. No more."

- [49] In re-examination, the grandmother said that from the time they returned home from the movie to when they finished building the trolley, there was no time when the child was unsupervised by her. The grandmother said she sat the table and had a cup of coffee with the appellant. The child was in the study drawing on her iPad.

Father

- [50] The child's father gave evidence that the appellant and the grandmother came up to look after the children in the December 2023 school holidays. The next day, he left for work early in the morning. He returned close to 8.00 pm. He picked up dinner on the way home. When he arrived home, the child was sitting on a couch with her iPad. She had headphones on. The brother was in the study, on the game console. The appellant and the grandmother were sitting out on the back patio. The father and his partner tried to round everyone up for dinner. The child refused to come to the table. After a period of time, the appellant and the grandmother came inside to collect some food and went back outside.
- [51] The father said after dinner, he, his partner, the brother and the child watched a movie. After about 20 minutes, the appellant and the grandmother came into the room. The grandmother said they were going to go to the beach the next day. The child snapped, "No. I'm not going anywhere with them." The grandmother replied, "She will do as she's told and she will come to us." The grandmother then marched towards the child. The father told the grandmother to back up, but she started yelling loudly and said, "Your daughter had said horrible things today." The father did not know what the grandmother was talking about. At that point, the father's partner took the children from the room.
- [52] After five or 10 minutes, the father's partner came to him and said, "You need to come inside and urgently hear what I have – [the child] has to say." The father went into the child's bedroom. He asked the partner and the brother to leave. He asked the child, "What happened today[?]" The child said she tried to tell the grandmother what had happened in the pool. The child said, "I was sitting on the step. [The appellant] grabbed my hand and put it down his shorts, and I touched skin. I pulled my hand away. I swam away, and I swam around the pool." The child also said, "I was swimming around. I was laying on my back floating, and then [the appellant] was behind me, and I had my head resting on his shoulder. He was behind me. And then I felt his hand down inside my swimmers touching my gina." When the father asked where the grandmother was, the child said, "She was not in the pool." The child said, "I got – I moved straight away from [the appellant]. I got out of the pool." The child said that the appellant stayed in the pool. The child said the grandmother told the child they were horrible lies and told her to go away.

- [53] The child's father said after that conversation, he asked the appellant and the grandmother to leave. After they had done so, he asked the child whether the appellant had put his finger inside her. The child said "no". He asked the child if she was hurt anywhere else. The child said "no". The child then said, "This is not the first time this has happened. It happened before when they were last here staying with us." The child said, "It was the last time they stayed here" and agreed she meant the last school holidays. The child said, "I was asleep in your bed and I woke up to [the appellant] beside me and he'd had my hand in his pants". The child said she pulled her hand away and left the room. The child said she found the grandmother and they built a craft trolley together.
- [54] In cross-examination, the child's father agreed that the child had made it very clear that she did not want to go to the beach the next day. The child said, "I'm not going anywhere with [the grandmother] or [the appellant]". He agreed that the child told him that the appellant had put her hand down his pants in the pool.

Other

- [55] A police officer gave evidence that he obtained the child's birth certificate.

Consideration

Ground 1

- [56] The determination of a ground of appeal that a jury verdict was unreasonable requires this Court to undertake its own independent assessment of the record, to determine whether it was open to the jury, on a consideration of the evidence as a whole, to be satisfied beyond reasonable doubt of the appellant's guilt of each offence.
- [57] In undertaking that independent assessment, due regard is to be given to the jury's role in determining guilt and the advantages afforded to the jury in having heard and seen the witnesses give evidence. However, if the independent assessment reveals discrepancies, inconsistencies, inadequacies or other reasons why, notwithstanding those advantages, the jury ought to have entertained a reasonable doubt as to the appellant's guilt of the offence, the verdict is to be set aside as unreasonable.¹
- [58] The appellant contends that the jury's verdicts in the present case were unreasonable, as the child, having promised to tell the truth, accepted that she had earlier lied by recanting her evidence about the act underpinning count 2 on the indictment. Further, vital parts of the child's account were contradicted by her grandmother, other parts of that account were contradicted by her brother and in other respects, her evidence was uncertain, inconsistent and contradicted by other evidence.
- [59] The difficulty with the appellant's contentions in this regard is that there is no basis for the central premise that the child accepted that she had lied in respect of her evidence about the act underpinning count 2. Further, the circumstances said to arise from the other evidence were matters which came from different recollections. None were of the character that they must cause the jury to entertain a reasonable doubt as to the reliability and credibility of the child's evidence of each act the subject of counts 1 and 3.

¹ *Pell v The Queen* (2020) 268 CLR 123; *Dansie v The Queen* (2022) 274 CLR 651.

- [60] First, at no stage in her evidence did the child accept that she had lied in respect of the act underpinning count 2.
- [61] Second, the child did not recant her evidence about that act. The child, when giving evidence almost two years after the event, stated that in relation to the pool incident, she could only remember the appellant putting his hand down her swimmers.
- [62] Third, whilst the child agreed that her evidence was that at no time had the appellant placed her hand inside his pants whilst in the pool, that evidence must be viewed in the context of her memory at the time of giving evidence. The child was giving evidence consistent with her then recollection of events surrounding the pool.
- [63] Fourth, whilst the child's evidence contained inconsistencies, the child's account of the events the subject of counts 1 and 3 remained consistent, both in her account to police and at trial. That consistency was not shaken in cross-examination.
- [64] Fifth, whilst the child's account was directly contradicted by the grandmother's evidence, there was a sound basis for the jury to reject the grandmother as a reliable and credible witness. Her evidence that the shower had taken less than a minute, having regard to her concession that she had told police that it was two minutes and, further, that her evidence was based on her own timing undertaken subsequent upon her return to Brisbane, rather than any independent analysis, suggested reconstruction not recollection. Once the jury rejected that evidence, it was open to reject her evidence that the appellant remained out of the pool after she left to go into the house. The jury had the brother's evidence that it was 10 to 15 minutes later before the child came into the house. His reasons for knowing that fact was credible and compelling. That being so, there was time during which the appellant could have been in the pool with the child, outside of the grandmother's sight. Finally, the jury may have properly doubted the grandmother's credibility and reliability, in circumstances where she emphatically and immediately rejected the child's account without asking any further questions and where her evidence otherwise displayed a partiality against the child, such that it was open for the jury to conclude that her evidence lacked objectivity and was not a proper basis to reject the child's account.
- [65] Sixth, the child's account was consistent in material respects with the preliminary complaint evidence and with the child's initial statement to police. Whilst the child's statement to the father that the appellant had not placed his finger inside her vagina was inconsistent with her account to police, the account to police referred to his fingers going inside her vagina for a "millisecond". It was open to the jury to view that inconsistency as of no moment in those circumstances.
- [66] Seventh, the jury may have considered the inconsistency between the child's account and the evidence of her brother, as to whether the child slept on the afternoon of the incident, the subject of count 1, as being of little moment. The brother was intent on playing his game and was in another room.
- [67] Finally, a consideration of the evidence as a whole supports a conclusion that there was a strong basis for the jury to be satisfied of the reliability and credibility of the child's evidence as to the acts the subject of counts 1 and 3, beyond reasonable doubt. As the judge directed the jury, that was the essential requirement, if the jury was to be satisfied of the appellant's guilt of each of those offences. As it was open to the jury to be so satisfied, there is no basis to conclude that the jury ought to have entertained a doubt as to the appellant's guilt of either counts 1 or 3 on the indictment.

[68] The verdicts of the jury were not unreasonable.

Ground 2

[69] The appellant submits that the jury should have been directed that in order to convict the appellant, it needed to reject the grandmother's evidence, beyond a reasonable doubt. In support of that contention, the appellant submits that the evidence given by the grandmother proved the following intermediate facts which, unless rejected beyond reasonable doubt, entitled the appellant to an acquittal on each count: that the child was under her direct supervision at the time of the alleged offending on the first occasion, and that the grandmother saw the appellant get out of and remain out of the pool during the second occasion, such that those events could not have taken place.

[70] However, those matters were no more than facts about which there was conflicting evidence. Depending on the evidence accepted by the jury, they were not established as facts. Importantly, there was direct evidence to the contrary by the child which it was open to the jury to accept, if they were satisfied of the reliability and credibility of the child's evidence, beyond reasonable doubt.

[71] As was observed in *R v MEZ*,² it is a rare case where an appeal court will set aside the verdict of a jury where the jury has been convinced of the complainant's credibility and reliability and full advantage is given to the jury's advantage. Unlike *MEZ*, there was a challenge to the credibility and reliability of the grandmother's evidence, such that it was open to reject her evidence as reliable and credible. Further, the complainant did not concede to a poor memory or to suffering medical conditions which affected her memory.

[72] In such circumstances, there was no requirement for the trial judge to give the direction sought by the appellant. The trial judge properly directed the jury that in order to be satisfied of the appellant's guilt of each count, beyond reasonable doubt, they had to be satisfied of the reliability and credibility of the child's account of each of the acts the subject of counts 1 and 3, beyond reasonable doubt.

[73] There was no miscarriage of justice by reason of the trial judge's failure to give the direction contended for by the appellant.

Ground 3

[74] The appellant submits that the prosecutor impermissibly impeached one of his own witnesses, by inviting the jury to conclude that the grandmother "was a perjurer", in circumstances where it was never put to the grandmother that she had perjured herself. Further, it is submitted that defence counsel would not have anticipated the need to meet or address that allegation. Those circumstances, it is submitted, give rise to a miscarriage of justice because the jury could only have found the appellant guilty on each count, by rejecting as untruthful, the evidence given by the grandmother.

[75] In address, the prosecutor described the grandmother as someone the child thought she could trust, when recounting the child's evidence that she had left the pool to complain to her grandmother. In relation to that complaint, the prosecutor said:

"She told [the grandmother] and was dismissed very promptly. And that dismissal, and her other evidence, is why I say you can prefer [the

² [2026] QCA 44.

child] and [the brother's] evidence over the evidence of [the grandmother], and that it's a matter for you when deciding what weight to attribute to each of their collective – each of their collective evidence independently and also collectively.

I'm going to invite you to have regard to these circumstances which go towards why you would accept [the child] and [the brother's] account, and that is she lives with [the appellant] in Brisbane, she's the wife of [the appellant], she's married for almost 51 years, married in 1975. When she gave her evidence, she was referring collectively to each other as 'we'. It was, 'We were doing things.' She left that night in December 2023 with [the appellant]. She dismissed [the child] straightaway and said she was having fun with [the appellant] in the pool.

There were times where she struggled with her evidence and at times she had to come back to what she was talking about, and collectively, it's my submission that you take that evidence with a grain of salt. Splashing in the pool with [the appellant] doesn't mean it didn't happen, and that because she reacts in a certain way, doesn't mean that it didn't happen.

After being told [the grandmother's] thoughts that night are about getting into her car and taking her to Mission Beach the next day. Why would [the child] want to go sit in a car for two hours with [the grandmother], the woman who rebuffed her, and the man who touched her vagina? It's her grandfather that she thought it was weird and didn't like it, but as an eight year old girl, with limited life experience, telling adults is what she's supposed to do. [The grandmother] revealed her hand with her conduct afterwards. It was that instant dismissal and her saying that, 'I know [the appellant], he wouldn't do that.'"

- [76] Whilst those submissions called into question the reliability and credibility of the grandmother's evidence, nowhere within them was there an assertion that the grandmother had perjured herself. Further, there was nothing impermissible or inappropriate in those aspects of the prosecutor's address to the jury.
- [77] The grandmother's immediate dismissal of the child's complaint supported the observation that she had "revealed her hand with her conduct afterwards" and her actions in timing her re-creation of the period she showered after leaving the pool and in denigrating the child's character at other times, supported a contention that the jury would take her evidence "with a grain of salt."
- [78] There is also no substance in the contention that defence counsel would not have anticipated the need to meet a claim that the grandmother's evidence lacked honesty. Apart from the obvious circumstance that defence counsel addressed after the prosecutor (and therefore had the opportunity), both the prosecutor and defence counsel exchanged documents setting out the issues in contention, before addresses. In those documents, the Crown expressly referred to preferring the child's evidence and that of her brother's over the grandmother, because of the circumstances of the grandmother's immediate dismissal of the complaint and defence counsel expressly referred to the jury not rejecting the grandmother's evidence because of "collusion or

protection” of the appellant submitting the grandmother had no reason to lie and there was no suggestion in her evidence that she was lying under oath.

- [79] There was no miscarriage of justice by reason of the prosecutor’s submissions to the jury about rejecting the grandmother’s evidence.

Ground 4

- [80] The appellant submits that the prosecutor impermissibly invited sympathy for the child in his address, by reason of the following statements at the end of the Crown closing address:

“Now, in conclusion, and what I opened to you this afternoon on, [the child] told [the grandmother] what [the appellant] did to her. She told [the father’s partner]. She told [the father]. She told police, and she’s told all of you. [The child] knew what happened and she knew that the actions of [the appellant] were wrong on those days. [The child] would not have known that this would have put in motion the long grind of the criminal justice system and all that it entails.

When you consider all of the evidence in this case, you should be comforted by the fact that the evidence pointing to guilt of [the appellant] comes from other sources and from other directions in many different ways. This conclusion of guilt does not depend on some risky process of reasoning. It depends on a careful and calm consideration of evidence that demonstrates the guilt of [the appellant] clearly.

You know that human emotions such as sympathy and prejudice have no part in your deliberations and must be put to one side. You may be told that yours is an intellectual task, and it is often said to juries that their task is one of the head and not the heart. In this case, in the end, your head will clearly and strongly tell you what your heart may not want to believe, and that is [the appellant] really did indecently deal with his own granddaughter.

And finally, remember this: above all, this is [the child’s] only day in court. She has come before you and presented her evidence and now seeks justice, under law, as a result of what [the appellant] has done to her. You know what he did, he committed indecent treatment, and you know this beyond a reasonable doubt. You should find him guilty.”

- [81] The final observation of the prosecutor was inappropriate. The references to the child’s “only day in court” and “now seeks justice, under law” was plainly directed towards the jury’s emotions, something which the prosecutor had expressly said was to have no part in the jury’s deliberations.
- [82] However, in the circumstances of the address as a whole, there is no basis to conclude that that inappropriate observation could realistically have affected the jury’s reasoning to guilt of either offence.³ The jury was expressly directed by the trial judge to dismiss all feelings of sympathy or prejudice and that such emotion had no

³ *Brawn v The King* (2025) 99 ALJR 872 at 876 [10].

part to play in their decision, with their duty being to approach the evidence dispassionately, deciding guilt or innocence upon the whole of the evidence. There is no basis to doubt that the jury faithfully followed that direction.

- [83] There was no miscarriage of justice by reason of the prosecutor's inappropriate invitation for sympathy for the child.

Ground 5

- [84] The appellant submits that evidence led from the father's partner as preliminary complaint evidence was incapable of being preliminary complaint evidence as it was evidence of what the child had told the grandmother, not evidence of complaint. Further, it is submitted the jury was incorrectly directed that it could use evidence that the brother overheard the child speaking to the father's partner, as preliminary complaint evidence.

- [85] The relevant evidence given by the father's partner was as follows:

"Okay. Now, you've come into the bedroom. What happened once you were all in the bedroom?---[The child] was sitting on her bed, [the brother] was sitting on the mattress on the floor, which he was sleeping on during the visit of [the appellant] and [the grandmother] because [the child] and [the brother] were sharing a bedroom. Um – I sat on the bed with [the child] – um – and comforted her with a hug because she was extremely upset, unconsolably upset. Um – and I hugged her and I said to her – um – 'Sweetie, what was all of that about with [the grandmother]?' Um – [the grandmother] [indistinct] we call her [the grandmother]. Um – to which she replied – um – 'It's because I told her something this afternoon.' And I said, 'Well, do you want to tell me?' And she said, 'Yes, but I don't want [the brother] to hear.' And I said, '[the brother], go out of the room.' And then I said, 'Actually, no, don't.' Because they were out there – um – meaning [the appellant] and [the grandmother] were out there. Um – he said 'What about if I put a pillow over my head?' Um – I said yes, that's fine. So he put a pillow over his head to cover his ears. Um – and then [the child] said to me – um – 'I told [the grandmother] this afternoon that I was in the pool with [the appellant]', when she got out of the shower 'and [the appellant] put my hand down his pants and then he touched my vagina.'

And is that what she said to you that you she had told [the grandmother]?---Yes, correct."

- [86] Whilst the father's partner agreed, in answer to a question, that the child was telling her what she had told her grandmother, the question asked of the child by the father's partner was not so limited. The question was, "Well, do you want to tell me?" The answer thereafter did constitute the disclosure of the alleged commission of a sexual offence. This view is reinforced by the father's partner response to the child, who stated, "I believe you. You're safe." As such, evidence of how and when the complaint was made about the alleged commission of the offence was properly admitted as preliminary complaint evidence.⁴

⁴ R v AW [2005] QCA 152 at [26].

- [87] Similarly, evidence given by the brother of the conversation was properly admitted as preliminary complaint evidence. The jury was properly directed as to the use that could be made of such evidence.
- [88] There was no misdirection by the trial judge as to the use of the evidence of the child's conversation with the father's partner, as preliminary complaint evidence.

Orders

- [89] I would order:
1. The appeal be dismissed.
- [90] **BROWN JA:** I agree with the proposed order of Boddice JA that the appeal should be dismissed. As to ground one of the appeal, I have independently assessed the sufficiency and quality of the whole of the evidence and agree that it was open to the jury to be satisfied beyond reasonable doubt that the appellant was guilty. I also agree with Boddice JA that the other grounds of appeal have not been established.