Attachment B

CRITIQUE OF JUDGEMENT

OF THE

NSW COURT OF CRIMINAL APPEAL

RC v R [2020] NSWCCA 76

CRITIQUE OF JUDGEMENT OF THE NSW COURT OF CRIMINAL APPEAL

RC v R [2020] NSWCCA 76

The judgement can be accessed here:
https://www.caselaw.nsw.gov.au/decision/5e8e56a5e4b0f66047ed89b9

Introduction

1. The judgement was delivered by Her Honour, Wilson J. RA Hulme J and Hamill J delivered short, non-substantive judgements agreeing with Wilson J.

2. In analysing the facts and verdicts, Wilson J quoted extensively from precedents relating to the role of an appellate court emphasising, correctly, that it was not the function of the appellate court to second guess the jury or re-try the case; and that the function of the appeal court is to examine the record to see, notwithstanding an assumption that the evidence of the complainant was assessed by the jury to be credible and reliable, whether – either by reason of inconsistencies, discrepancies, or other inadequacy; or in the light of other evidence – the court is satisfied that the jury, acting rationally, ought nonetheless to have entertained a reasonable doubt as to proof of guilt. (Pell v The Queen 2020 HCA 12 at 39); and where there is an appeal against conviction on the ground that the verdict was unreasonable, the ultimate question for the appeal court "must always be whether the [appeal] court 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." (The Queen v Baden-Clay 2016 HCA 35 at 66)

3. Wilson J's judgement, while being presented against these core criteria, in reality, seemed to be more driven by the overarching objective of defending and safe-guarding the jury verdict; and in doing so glossed over, ignored or sought to excuse away "inconsistencies, discrepancies, [and]…other inadequacy; [and]…other evidence" that the High Court specified were key to judging that "notwithstanding an assumption that the evidence of the complainant was assessed by the jury to be credible and reliable… the jury, acting rationally, ought nonetheless to have entertained a reasonable doubt as to proof of guilt." Wilson J's judgement did not meet the judicial guidelines or benchmarks as set out in the cases cited in the judgement.

4. As indicated in the judgement, the only evidence adduced by the prosecution stems from the informant, then six years old. A key element in assessing the evidence would be and should be the reactions and choice of words and expressions of a six-year-old child. While these issues were addressed to an extent, this seemed to have been done in a selective manner consistent with the perceived objective of defending the jury verdict rather than considering them against the tests articulated by the High Court.

5. While it is understandable that a six-year-old would have some trouble expressing himself accurately and consistently, the number and extent of his variable versions, the wide scope of interpretations of what he might have been trying to say and why were not explored nor

analysed in a methodical manner. These aspects in themselves should have raised serious doubts, not necessarily solely about the complainant's truthfulness, but about reliability and reality; and, therefore, about the safety of the verdict.

6. Two further aspects where the NSWCCA failed to take fully into account relevant issues were the extensive suite of "other evidence" provided by the appellant in itself and relationships between that body of evidence and the complainant's. The NSWCCA alluded to the former (the interview evidence in itself) but without assessing it against the benchmarks contained in the citations from Pell v The Queen and other cases; and failed to take the important step of examining or making judgements about the latter (the relationship between the interview evidence and the complainant's evidence), thus falling far short of an assessment as to whether the jury ought to have entertained a reasonable doubt as to proof of guilt.

7. Wilson J dealt with the complainant's interviews with the Joint Investigation Response Taskforce (JIRT) from paragraphs 16 to 27 of the judgement, describing them as "the bulk of LC's [the complainant's] evidence in chief at the appellant's trial pursuant to ss 306S and 306U of the *Criminal Procedure Act 1986* (NSW)."

8. Para 22 of the judgement contains a summary of evidence relating to touching the complainant's "back private." While the complainant's answers are correctly quoted, the actual questioning and answering were more extensive. In the course of questioning, the complainant described his being washed in the following way: "he got some soap and then he went to wash my body….then I got out of the bath….he rubbed soap on his hands and then he washed me with his hands." He was asked "so what part of your privates did he touch?" To which he answered, "my back private." Then he was asked "so what part of his body touched your back private? [no audible reply] The questioner continued: "His finger. OK. Did his finger go on the inside or the outside or something else?" to which LC replied "I don't know. I don't know."

9. On being further questioned thus: "so did his finger go inside where your poop *(sic)* or outside or something else?" LC then answered "inside." When asked, "so, how did it make you feel when grandpa put his finger inside your back private?" there was no audible reply but the questioner continued: "Angry. OK. And why did it make you feel angry?" LC answers "because he did it twice." Q: "He did it twice. When, when did he do it the second time?" LC: "um, up again." Q: "OK. So did he take his finger out and then put it back in or something else?" LC: "He put it up and then put it out and then put it back in." On being asked did it hurt or not hurt or something else, he replied "hurt". When asked did he say anything to Grandpa Robert, he replied no; and on being further questioned said "everyone was asleep and I didn't want to yell."

10. A new line of questioning arose when the issue of touching his "front private" was being addressed. Although this relates to count 1, on which the verdict was not guilty, it is relevant also to the issues discussed above because the complainant answers generically in relation to both front and back privates. LC was asked, "so when you have a shower how do you wash yourself, who does it?" [no audible reply] Q:"so you wash your own front

private?” LC: “hmm.” Q: “who washes that?” LC: “no one.” Q: “well, how does it get clean?” LC: “it’s already clean.” Q: “it’s already clean OK. What about mummy does mummy sometimes wash it?” LC: “mmm mmm.” Q: “no?” LC: “mummy says no one’s allowed to wash my privates.” Q: “ok”. LC: “even her or daddy.”

11. Further questioning took place related to LC’s telling his mum. Q: so when you spoke to mum, what did you tell mum?...what did you tell her?” LC: “what Grandpa did to me.” Q: “yeah. And what did mum say?” LC: “she said Grandpa’s not allowed to come over again.” Q: “ok, and what happened after you told mum?” LC: “um, mum went to ring dad and then daddy went to ring Grandpa and said you’re not allowed to come over to our house again.” Q: “how did you know that dad rang Grandpa?” LC: “because mum told me.”

12. The reason for the somewhat extensive quoting is as follows:

    12.1. first, the interview evidence was, as Wilson J commented, “the bulk of LC’s evidence in chief.” This means that LC’s wording and reactions are integral to assessing the reliability of the jury verdict;

    12.2. secondly, the interview evidence contains several “inconsistencies, discrepancies or other inadequacy” that warranted more detailed attention against the High Court’s criteria for the NSWCAA to fulfil its role as an appellate court;

    12.3. thirdly, in presenting substantive parts of this evidence, the NSWCCA did not give appropriate attention or weight to significant elements of “other evidence,” namely the appellant’s evidence;

    12.4. fourthly, there were significant aspects of the complainant’s attitudes and perceptions – and therefore the way his evidence was presented – that were likely imbibed by him from the influence of his mother.

13. The appellant cooperatively allowed himself to be subjected to an extensive interview by the police without the need for legal assistance. He openly and willingly described the relevant facts and addressed all the allegations. The NSWCCA, while quoting a few salient elements of this evidence, did not address the substance or make any comments on it. The contrast to the manner in which the court addressed evidence from the complainant is illustrated, as an example, by justifying that digital penetration of the complainant could realistically take place while he is seated in the bath. The judgment speculated that “doubtless, the jury also concluded that it would be an easy thing for an older, stronger individual to slide a hand under a seated naked child and digitally penetrate the child’s anus.” (See para 160 of the judgement.) Such a conclusion belies the far more realistic alternative of the complaint’s standing up, which the appellant in his evidence said he did, the more realistic alternative of a normal washing process for a small child in the bath, and the unlikelihood of the scenario speculatively attributed to the jury. The judgement thus takes the assumption he was seated the whole time as a given fact solely on the basis of the complainant’s evidence despite the appellant’s evidence that the complainant stood up for part of the washing process and despite the fact that having a child stand up to wash parts

of the child's body that would otherwise be under the water would be the natural and common practice for bathing a child in a bath of water.

14. The selectively addressed evidence of the complainant was heavily weighted in favour of safeguarding the jury verdict far beyond the benchmarks the NSWCCA itself chose to present in the cases it cited. The manner in which the NSWCCA dealt with the evidence of the appellant in its judgement did not take it into account to the extent warranted for an appropriate role to be attributed to it (as per the citation from Pell v The Queen) or for a judgement about it to be fair to the appellant and in conformity with the benchmarks cited.

Analysis

15. Having dismissed grounds 2 and 3 of the appeal, the judgement proceeds, from para 123, to address grounds 1 and 4. The pertinent issues here relate to different verdicts for counts 1 and 2; and for 2 and 3.

16. In para 129, the judgments states "there is a logical and reasonable explanation for the differing verdicts returned with respect to counts 1 and 2, resting on the distinction between the element of sexual gratification that applied to the former, but not to the latter.

17. At para 130 of the judgement, Wilson J, in addressing the not guilty verdict on count 1 (touching the complainant's penis), states that "it was open to the jury to accept that the appellant had touched the complainant's penis as he described in his evidence but, given the context in which the touching occurred, that of an adult family member bathing a young child, not to accept beyond reasonable doubt that the touching was for a sexual purpose."

18. Wilson J continues in para 131, "there was no equivalent element to prove with respect to count 2; the purpose of the digital penetration was irrelevant. If the jury accepted that the appellant had penetrated the complainant's anus to any degree with his finger, and that it was done deliberately, the reason for the penetration did not matter."

19. The judgement at this point diverts into something of tangential argument about lack of need for a sexual purpose by quoting from cases (see para 132) where penetration had taken place not motivated by sexual purposes but, in the cases cited, seemingly by perversely driven uncontrolled anger at the small children involved. This misses the important point of why there is a link between the not guilty verdict for touching the penis and the guilty verdict of penetration of the anus.

20. The not guilty verdict on count 1 means that it was accepted, in effect, that there was no sexual motivation and so, in practical terms, it was accepted that touching the penis was part of the normal washing process, as the appellant testified in his evidence and as acknowledged by Wilson J. What is inconsistent is the acceptance that, as a continuing part of the same quickly executed washing process, the appellant would not just consciously but intentionally and deliberately put his finger into the anus of the complainant, as opposed to running his hand up and down the crack of the complainant's bottom, as testified by the appellant, as part of the same washing process – and which the appellant said in his

interview with police "took place over about 2 or 3 seconds at most at that particular part of the body."

21. The appellant's evidence, backed by his stated practice of "bathing a kid which he's done so many times" (see para 84 of the judgement) and further evidence in his interview with police about the close and caring relationships he had and has not only with the complainant but also with his sister and other grandchildren over many years with no issues. All of this was available to the appeal court in the form of references from the parents of two older grandchildren and the parent of a younger grandchild as well as from the two older grandchildren themselves, all of whom testified to the appellant's reliability, caring oversight of grandchildren and their confidence in him; bearing in mind that on numerous occasions and for extended periods, the appellant had exclusive responsibility for supervising and caring for them. This evidence may not be precisely equivalent to Justice Keane's comments during the Pell v The Queen High Court hearing that practice is usually regarded as powerful evidence[1], but there's certainly a common underlying principle also supported by the complainant's negative answer when asked during the JIRT interview if grandpa had ever touched him before (the appellant had previously bathed him in exactly the same manner, as with other grandchildren and, for that matter, children). At the very least, the combination of the count 1 not guilty verdict (extrapolating that it was thus considered part of the normal washing process) and the appellant's evidence in relation to counts 2 (and 3) constitutes sound grounds for concluding that washing the complainant's bottom was no more than as stated by the appellant; and did not involve penetration of his anus, least of all deliberately. Neither was there – nor any grounds for inferring the jury thought there was – any suggestion of the sort of perverse motivation or behaviour alluded to in the cases cited in the judgement.

22. This set of circumstances provides a sound basis for the NSWCAA to have concluded (and it should have done so) that "the court is satisfied that the jury, acting rationally, ought none the less, to have entertained a reasonable doubt as to proof of guilt," notwithstanding the complainant's descriptive language.

23. There was also an issue of consistency between the verdicts of not guilty and guilty for the same charges of digitally penetrating the anus (counts 2 and 3).

24. On this issue also the judgement focuses on justification of the jury verdict of guilty on count 2 rather than, as required by the High Court cases cited, examining whether "the jury, acting rationally, ought none the less to have entertained a reasonable doubt as to proof of guilt."

25. The judgement in paras 137 to 142 makes speculative judgements that it hypothesises could underpin the differing jury verdicts on counts 2 and 3. Alternative inferences, however, could equally – and convincingly – be asserted in relation to them. There is no soundly

---

[1] Video of High Court hearing, 12 March 2020 @ 1:32:19: https://www.hcourt.gov.au/cases/cases-av/av-2020-03-12

credible basis for speculating that "the circumstances of the complaint [to the complainant's mother at shower time next day] were such that the jury may have regarded it as compelling evidence. The judgement makes comparable assertions about the terms of the complaint at that time. It cites reference to grandpa had "hurt" him and "grandpa's finger went in my bottom and I could feel it in my tummy." The judgement then speculates "the complainant's assertion that that he could feel what was done to him in his tummy may well have struck the jury as startlingly consistent with how a child penetrated in that way would likely experience the sensation."

26. As at other places in the judgement, the overriding tenor of the court's judgement is to shore up the jury verdict with speculative assertions rather than apply the far more tangible and cogent test set out by the High Court of whether "the court is satisfied that the jury, acting rationally, ought none the less, to have entertained a reasonable doubt as to proof of guilt." As mentioned above, there is no sound basis to the assertions spelled out in the judgement. The setting of the complaint to his mother (at shower time) could be nothing more than a convenient memory jogger of the experience of the day before that he had not expected.

27. From the evidence of the complainant and that of his mother, it is clear that considerable emphasis had been put on a six-year-old that he should be the only person who washed his private parts. He himself said in evidence that not even mummy or daddy washed him there. In both the JIRT interview and during the pre-record, the complainant on several occasions said that he did not like grandpa washing him because he did not want him to touch his privates. An indicative exchange is illustrated by this section from the pre-record*: Q. And when you told mummy that Grandpa had washed your bottom, did mummy say that was something he shouldn't have done? A. Yes. Q. Did she say that nobody should touch you there? A. Yes.* The evidence suggests that he had something of an obsession about anyone other than himself washing his privates. It's not surprising that he was startled to some degree – and confused and upset – when the appellant suddenly washed his privates. The evidence would strongly suggest his reactions and retelling of what happened were driven as much by his mentality than by what had actually taken place.

28. The fact that the immediate response of his mother was to tell the complainant that grandpa's not allowed to come over again, to tell him a couple of times he was a good boy for telling her, asking him to repeat his telling what happened, and, presumably, using the term "not appropriate" (see next para) further reenforces in the complainant's mind the view that simply washing his privates was wrong and should not have happened, thus, in part at least, tiggering his choice of words describing what happened.

29. Relevant to this observation is the issue of the complainant's use of "not appropriate" in his JIRT interview, which he admitted in the pre-record that he did not understand. When asked to tell "what grandpa did," his initial response was "it's not going to be not appropriate." When questioned about what "appropriate" meant, he said he doesn't know; and that he had heard his mother say it.

30. More doubt about what the complainant felt or didn't feel and his reactions arises from other exchanges as part of his evidence. These excerpts are from the pre-record.

> Q. Did you like Grandpa washing you or not like Grandpa washing you? A. Not like Grandpa washing me. Q. Why not? A. Because I didn't want him to touch my privates. Q. Was that because normally you washed your own privates? A. Yes. Q. When he washed your privates, did it tickle? A. A little bit
>
> Q. When grandpa washed you in the bath, how did it feel? A. Uncomfortable.
>
> Q. Do you remember whether you were happy or sad the night before your birthday?[2] A. Happy. Q. You know what pain is don't you? A. Yes. Q. Did you have any pain the night before your birthday? A. I can't remember. Q. Remember I talked earlier about having difficulty doing a poo? A. Yes. Q. How sometimes you got a pain in the tummy? A. Yes. Q. You didn't have a pain like that the night before your birthday, did you? A. No.

31. The judgement consistently interprets the complainant's reactions and choice of terminology in a way that underpins and protects the jury's guilty verdict on count 2. The responsibility of the NSWCCA was not to safeguard the jury verdict as such but to assess whether the jury, acting rationally, ought none the less, to have entertained a reasonable doubt as to proof of guilt.

32. Although the criteria to be used by the court in this regard are expressed in slightly different terms in the judgements from Pell v The Queen and The Queen v Baden Clay (as quoted in para 2 above), they complement one another; and both require an objective assessment of whether the jury should have entertained a doubt rather than speculate and hypothesise in order to defend and protect the jury verdict. The NSWCCA has pursued this latter approach rather than the one clearly required from the High Court judgements cited. In doing so, the court has not properly fulfilled its appellate court obligations in a thorough manner, thus resulting in the likelihood of an innocent person being convicted.

33. As stated in para 4 and 5 above, the expressions used by the complainant have to be assessed in the light of his age, his experience, situation and, indeed, his mentality. This is where there is scope for alternative interpretations that should have been considered to have properly applied High Court criteria for appellate courts.

34. The first thing that should be addressed is the likely mentality of the complainant. This has been alluded to in several paragraphs above. It's obvious from the evidence that he had been strongly imbued with a mentality whereby no one was to wash his privates except himself; and this excluded even his parents. While there is no intended criticism about this, the attitude imbued in him would likely trigger a strong reaction both physically and mentally to someone without warning washing his privates no matter how quickly that might have been done. He would have instinctively seen this as a forbidden intrusion against

---

[2] It is clear from the context that the questioning related to the evening of the bath, riding his bike and having a birthday dinner and cake.

him. This, in turn, would have coloured all his subsequent reactions and descriptions as set out in his relating to his mother what happened, in his interviews and at the pre-record. In addition, this mentality was further consolidated by the way his mother handled the situation.

35. The appellant's evidence is that he washed him quicky (about 10 seconds worth, spending most of that on his dirty knees, with about 2-3 seconds on his private parts). The appellant's evidence was that he moved his hand quickly down the crack between the complainant's cheeks and back up again. That was the extent of washing the complainant's "back privates" Taking into account other relevant aspects (the language used by a six-year-old to describe what he felt, his mentality etc), it cannot be ruled out that what took place accords with the appellant's evidence. What the complainant would have felt is the fast action of the appellant's hand moving quickly along his bottom up and down (or down and) up in two motions, which he has expressed the way he did. Also, from his uncertainty in responding to questions, it would seem that there was uncertainty as to whether he had a full understanding of what his interrogators at various times were saying when it came to the alternatives of 'inside' or 'outside.'. It's equally likely that 'inside' to him was feeling the appellant's hand between his cheeks and not penetration of the anus (a concept he clearly did not seem to understand). When first asked did [the appellant's] finger go on the inside of the outside or something else, he replied "I don't know. I don't know." On the basis of all of this, the jury should have entertained a reasonable doubt as to the guilt of the appellant on count 2.

36. In addition, had there been penetration – even once and more so if twice (and with the rapidity, which would have been far from gentle, that the complainant asserted) – the complainant's subsequent behaviour would most likely have been different to what it was. if what happened did actually hurt him (and not just in his tummy). First, it would have assuredly hurt him considerably in the bottom; secondly, he would inevitably have exhibited some physical response (even if a half-suppressed 'ouch' or gesture of disapproval, either of which he would likely have recalled when asked about his reaction, as he was asked) yet he gave factually wrong and inconsistent reasons for not yelling out; thirdly, the bath was immediately followed by his returning to his bike and riding it over jumps without any discomfort (as attested at the pre-record and in videos taken at the time). Any one of these factors should have raised doubts about the accuracy and reliability of the language used by the complainant. Taken together, they should have compounded those doubts.

37. His reaction to being washed in that manner would have startled him and felt totally alien and uncomfortable. Given his mentality as outlined above, and the appellant's evidence that it was a quick (2-3 seconds) process, he would easily have expressed his feeling as "hurt" without actually feeling physical pain. This option is also bolstered by the inconsistent remarks about how he felt or didn't feel as outlined above in several paragraphs.

38. With regard to the complainant's comment about feeling what was being done to him in his tummy, such a description is entirely consistent with a spontaneous reaction of unpleasant surprise or shock at feeling the appellant's hand washing between his cheeks. It is natural

for an experience of unpleasant surprise or shock to bring on butterflies in the stomach. There is an abundance of literature on the Internet attesting to "nervous stomach" brought on by something stressful happening or even about to happen, without any physical causes. While mature people would likely appreciate the reasons behind "nervous stomach" it is unlikely that a six-year-old would do so, thus making all the more dangerous the judgement's hypothesis that feeling it in his tummy may well have struck the jury as "startingly consistent with how a child *penetrated in that way* would likely experience the sensation."

39. One of the issues relating to inconsistency between verdicts on counts 2 and 3 was evidence concerning how many times penetration was alleged to have happened. The issue centred on the fact that the complainant did not always state that it happened twice. The judgement drew on the trial judge's summing-up saying that people may not describe a sexual offence in the same way every time; and arguing that statements made by the complainant to his mother and the doctor, which did not specify that the offence supposedly happened twice, could be taken as evidence of the alleged offence (count 2) [not having regard necessarily to his saying it happened twice on other occasions].

40. The line of argument in paras 137 to 139 of the judgement overstates the intent of the trial judge's summing-up quoted at para 136 of the judgement. It is not disputed that evidence relating to the initial complaint (to the complainant's mother) can be taken as "some evidence that such an assault did occur." The judgement, however, goes beyond the intent of the summing-up by postulating that the complaint and the circumstances in which it came to be made may properly have been regarded by the jury as highly significant (see para 137); and that the jury might have found the complaint compelling in so far as it could provide evidence supportive of count 2 (see para 139).

41. First, the summing-up refers to using what was said in the complaint as "some evidence." This implies that other evidence should be used before a conclusion is reached. Other evidence would include – and should have included – consideration of the matters discussed above. Importantly, in the circumstances, the summing-up needs to be taken as saying, in effect, that the jury can use evidence of what was said in the complaint as "some evidence" that something happened to the complainant that he described in a particular way. Secondly, the assertion in para 140 of the judgement not only further overstates the scope of the summing-up but is based on a *non sequitur*. To state that the complaint (to the complainant's mother), in the context of the case, applied to count 2 but not to count 3 flies in the face of the summing-up's statements that [people] may not describe a sexual offence in the same way each time, that trauma may affect people differently including affecting how they recall events, and it is common for there to be differences in accounts of a sexual offence. The judgment then asserts that "this evidence [the initial complaint to the complainant's mother] is sufficient to provide a proper basis upon which the jury could acquit the appellant on count 3 but convict him of count 2." The judgement is in error on each of those conclusions. Apart from the several qualifications relevant to the cogency of "some evidence" there is also a considerable body of evidence that should have been

carefully considered to properly inform any verdict or verdicts as outlined and alluded to in many paragraphs above.

42. The error in the court's judgement on this issue is further compounded by drawing on the assertions outlined above to conclude that there was a stronger case advance by the Crown in support of count 2 and, therefore, the evidence for that count alone satisfied the jury of the appellant's guilt to the very high standard of proof beyond reasonable doubt; and that that conclusion necessarily undermines the force of the appellant's contention that the verdict on count 2 is unsafe and unsatisfactory, unreasonable and not supported by the evidence (see para 141 and 142).

43. If the analysis put forward in this paper is valid, then not only are the conclusions in para 140 of the judgement in error, but so also are the conclusions set out in paras 141 and 142. The net result of this is that the guilty verdict on count 2 is not supported by evidence that is without serious doubt and should, therefore, have been set aside.

44. It is pertinent that the complainant was emphatic that it happened twice. During the JIRT interview, when asked, "how did it make you feel when grandpa put his finger inside your back private?" he replied "angry." When asked, "why did it make you angry?" he replied, "because he did it twice." When asked, "did he take his finger out and then put it back or something else?" he replied, "he put it up and then he put it out and then he put it back in." Also during the pre-record, the complainant stated, "he pulled it out and put in back in." He was then asked, "so that's two times, is it?" to which he replied, "yes."

45. It's evident that its happening twice was important to the complainant and was very much part of his impressions of what happened even if he did not explicitly enumerate the twice aspect every time he spoke of what happened. The NSWCCA judgement erred in justifying the not guilty verdict for count 3 on the basis of cases' saying that a complainant didn't have to use the same terminology every time. This becomes another example of the court's shoring up the jury verdicts when, in the circumstances of the complainant's iteration and reiteration that [the same offence] happened twice – the very reason it made him angry, the judgement should have been that the jury should have had equal doubts about counts 2 and 3. Thus the inconsistency of the verdicts for counts 2 and 3 makes the guilty verdict on count 2 unsafe.

Conclusion

46. The NSW Court of Criminal Appeal did not review the evidence of this case with the objective of determining whether the jury ought to have entertained a reasonable doubt as to proof of guilt as required of an appellate court in the manner set out in judgements of the High Court. In contrast to that objective, the NSWCCA seemed more focussed on the objective of defending, justifying and shoring up the jury's verdict(s) often by way of speculation and hypotheses about what the jury might have thought. There are numerous "inconsistencies, discrepancies and inadequacy," as well as "other evidence" that should have been taken into account to ascertain whether the jury ought to have entertained a reasonable doubt as to proof of guilt rather than, in effect, side-stepping those issues and

focussing on upholding the jury verdict(s) by unjustified inferences. The NSWCCA has not properly fulfilled its appellate court obligations in a thorough manner, thus resulting in the likelihood of an innocent person being convicted.