SUPREME COURT OF QUEENSLAND

CITATION:	*R v WCB* [2024] QCA 62
PARTIES:	**R** **v** **WCB** (applicant)
FILE NO/S:	CA No 211 of 2023 DC No 192 of 2013
DIVISION:	Court of Appeal
PROCEEDING:	Application for Extension (Conviction)
ORIGINATING COURT:	District Court at Rockhampton – Date of Conviction: 19 March 2015 (Bowskill QC DCJ)
DELIVERED ON:	23 April 2024
DELIVERED AT:	Brisbane
HEARING DATE:	13 March 2024
JUDGES:	Morrison JA and Fraser AJA and Kelly J
ORDERS:	**1. Applications for leave to adduce evidence are refused.** **2. The application for an extension of time within which to appeal is refused.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – VERDICT UNREASONABLE OR INSUPPORTABLE HAVING REGARD TO EVIDENCE – APPEAL DISMISSED – where the applicant was convicted of one count of unlawful and indecent treatment of a child under the age of 16 years – where the applicant filed for an extension of time within which to appeal – where the jury accepted the complainant's evidence as credible and that it satisfied the requisite standard that the applicant was guilty – where the applicant admitted to having a sexual attraction to the complainant – where the applicant challenges the verdict on the basis that the jury could not have reached the status of satisfaction as to his guilt – whether the verdict of guilty was unreasonable or could not be supported having regard to the evidence CRIMINAL LAW – APPEAL AND NEW TRIAL – where the applicant also relied on other grounds of appeal including that he was inadequately represented by a defence lawyer and that the evidence from the complainant's brother could not have been believed by the jury – where, in addition, the applicant submits that his Autism Spectrum Disorder, which was not diagnosed until after the trial, was not explained to

the jury and the effects it had on the applicant's police interview – whether there is any merit in relation to these other grounds of appeal

Dansie v The Queen (2022) 274 CLR 651; [2022] HCA 25, considered
M v The Queen (1994) 181 CLR 487; [1994] HCA 63, considered
Pell v The Queen (2020) 268 CLR 123; [2020] HCA 12, considered
R v Miller (2021) 8 QR 221; [2021] QCA 126, considered

COUNSEL: The applicant appeared on his own behalf
M B Lehane for the respondent

SOLICITORS: The applicant appeared on his own behalf
Director of Public Prosecutions (Queensland) for the respondent

[1] **MORRISON JA:** On 19 March 2015 the applicant was convicted on one count of unlawfully and indecently dealing with his step-daughter, then a child under the age of 16 years. The conviction followed a four-day trial at which the principal witness was the complainant.

[2] The applicant now brings a number of applications, ultimately seeking to challenge his conviction. Those applications can be summarised as follows:

(a) an application, filed on 1 November 2023, for an extension of time within which to appeal;

(b) six applications to adduce further evidence.[1]

[3] The grounds proposed to be advanced the applicant, should leave be granted to extend the time, are as follows:

(a) Ground 1: the applicant was inadequately represented by his defence lawyer who did not: (i) act on his instructions; (ii) put forward the applicant's version of events; or (iii) obtain signed instructions from the applicant;

(b) Ground 2: at the time of the trial the applicant was unaware that he suffered from Autism Spectrum Disorder, a diagnosis in that respect having been made in 2018; the applicant's autism rendered much of the closing argument by the prosecutor fundamentally unfair; justice was not done because the jury were not instructed about the effects of autism on the applicant's testimony;

(c) Ground 3: the verdict was unsafe and unsatisfactory;

(d) Ground 4: the evidence given by the complainant's brother could not have been believed by the jury and should have been excluded; and

(e) Ground 5: at the time of the trial, the applicant's defence lawyer had been declared "not a fit and proper person to maintain a District Court Trial".

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[1] The applications were filed on 19 February 2024, and 6, 11, 12 and 13 March 2024.

[4] The principal witness at the trial was the complainant. Her evidence was in the form of a police interview admitted under s 93A of the *Evidence Act 1977* (Qld), and her pre-recorded evidence under s 21AK of the *Evidence Act*.

The complainant's police interviews

[5] The complainant was about 15 years old when she was interviewed by police. She told police about her family, including her 14 year-old brother, and the family circumstances that resulted in her living with her mother and the applicant (her step-father). The interview took place in [a North Queensland town] while she was on holiday and staying with her biological father and his family.

[6] The complainant was asked, in an open way, what she was there to tell the police about. She explained that the applicant was controlling in his behaviour and had started "yelling at everyone".[2] She explained that he had been verbally abusing her and everybody else, and her mother had stuck up for her when that happened. She then explained:

(a) when she turned 15 and started developing, she noticed that the applicant started to look into her room every time he walked past;

(b) on one occasion she was having a shower and the applicant was trying to look at her and made up an excuse when she told her mother;[3]

(c) she said the door to the bathroom had accidently come open and the applicant, who was moving softly, was looking through the bathroom door; he did it again when she was drying herself;[4]

(d) she said the applicant knew he had been seen, "so … he went back out and he thought I was giggling … and that I was ok with it, I think that's an excuse because obviously I wasn't giggling and I was not okay with it"[5];

(e) she described a second occasion when she was sleeping on a mattress on the floor:[6]

> "… I … was probably still asleep … he opened the door but … I was awake and he looked at me and I looked at him and I'm just like what the hell and he's just like oh good you're awake then he then … came and actually lied down on my bed and cuddled up to me and just expressed his feelings toward me. He said … you know that time when you saw me peeping at you in the shower yeah … I thought you were giggling so I … thought you were ok with it. And I'm just like I didn't say anything but I was thinking … a lot of shit ey … he told me … I have sexual feelings for … I am sexually attracted to you he said."

(f) the complainant explained that the applicant "was hugging up to me";

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2 AB 243.
3 AB 243, line 218 – AB 244, line 220.
4 AB 245.
5 AB 245, line 289 – AB 246, line 292.
6 AB 246, line 319 – AB 247, line 329.

(g) she said the applicant got under the sheet and hugged her around the waist, while she was lying on her left side;[7]

(h) she said the episode lasted about 15 minutes and what she could remember was that "he thought I was ok with the shower thing … and he … feels sexually attracted to me";[8]

(i) when asked about other things which had happened, the complainant described an occasion when she was lying in bed and the applicant came in to turn her alarm clock off; he sat on the bed and started rubbing her back, under her shirt;[9]

(j) the complainant was asked if there was time when she had been touched intimately or to a private part of her body; she said:[10]

> "… I was lying in bed again … and he came in to say good night I'm pretty sure … no it was that time when … he was laying down and telling me all his feelings when he got up he rubbed down my back and across my bottom … [he rubbed] just like here over my actual bottom … [and then] he just got up and walked out".

[7] The second interview with the complainant was about three weeks later. She was asked about the occasion which she had previously described, when the applicant peeked at her through the bathroom door. She explained that he was there only for a few seconds. The questions then turned to the occasion she had described when he had run his hand over her bottom. Asked to explain exactly how he had done that she said:[11]

> "… it's hard to explain, like … he went like that and then over my, that area, as he went to stand up … it actually felt like a sort of grabby feeling … but only a slow one though … I felt his whole hand."

[8] In the course of that description the complainant demonstrated how she had been touched on the bottom.

[9] In her oral evidence, given when she was 16, the complainant affirmed that what she had told the police officers in the police interviews was correct.

[10] In cross-examination the following matters were raised:

(a) that in 2012, when she saw the police in [a North Queensland town], she did not have a good relationship with the applicant;[12]

(b) she agreed that there was an occasion in February 2012 when the applicant found images of her breasts on her personal email or phone;[13]

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7 AB 248.
8 AB 249, lines 401-410.
9 AB 249, line 433 to AB 250, line 441.
10 AB 251, line 493 to AB 252, line 520. This is the subject of the count on the indictment.
11 AB 257-258.
12 AB 151, lines 30-38.
13 AB 152, lines 12-26.

(c) she agreed that her mother, the applicant and herself had a discussion about the inappropriateness of putting that type of material on her computer, and that her mother was concerned about the complainant's computer being used for improper purposes;[14]

(d) she explained that the images were found because she had sent a photo through her personal device via email, and her mother and the applicant checked her emails using the applicant's computer;[15]

(e) she agreed that she had sent the photos to some school friends including a male friend, and that was the subject of the disciplinary discussion between the applicant, her mother and herself;[16]

(f) she was asked if the applicant had done anything wrong to her up to the time that the naked photos were found early in 2012, and she responded, "… he was perving on me and hugging me inappropriately";[17]

(g) she agreed that the occasion when the applicant was looking into the bathroom was when the door was slightly opened, she was drying herself and the upper part of her body was exposed; she could not say for how long he was there, but "I did see him look through but then … he walked away … when I looked up";[18]

(h) it was put to her that on that occasion the applicant simply walked past the bathroom on his way to the toilet; she disagreed;[19]

(i) she agreed that was the first occasion when the applicant had acted towards her in an improper manner in a sexual sense; there was no improper touching prior to that;[20]

(j) as a consequence of that incident she and her mother had a discussion about the desirability of closing the bathroom door when the complainant showered; she said she was not suggesting that the applicant had opened the door; she agreed that she was told she had to be careful about being in the bathroom with the door open when she was either naked or semi-naked; that discussion occurred between herself, her mother and the applicant;[21]

(k) she did not have an actual memory of telling her mother about that incident, saying "I do in another situation but not this one";[22]

(l) it was put to her, and she agreed, that in the early part of being in grade 10 (in 2012) she had wanted to spend time at her friends' houses or shopping, but the applicant and her mother would not allow it;[23]

(m) it was put to her that on the occasion of the applicant looking through the bathroom door, she giggled; she disagreed with that;[24]

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14 AB 152, lines 28-43.
15 AB 153, line 15-16.
16 AB 153, lines 23-29.
17 AB 155, line 20-21.
18 AB 156.
19 AB 156, lines 44-46, AB 157, lines 17-19.
20 AB 157, lines 24-30.
21 AB 157, line 35 to AB158, line 7.
22 AB 158, line 26.
23 AB 158, lines 32-47.
24 AB 159, lines 28-33.

(n) cross-examination turned to the next occasion, when she was sleeping on the mattress on the floor; the complainant explained that incident in much the same way, saying that he laid beside her, then started saying he had sexual feelings for her, that she giggled when he saw her in the bathroom and therefore he thought it was okay;[25]

(o) it was put to her that it was frequent that the applicant came in to turn her alarm off in the mornings; she agreed, but added "he also lay beside me and did all that stuff";[26]

(p) she was cross-examined about the details of that occasion, including who was wearing what, if it was cold or hot, what was said and whether she had giggled on the occasion he looked through the bathroom door;[27]

(q) she was then cross-examined about her account of what happened when he put his hand on her bottom, establishing that it was on the outside of the clothing and happened when he was getting to his feet;[28] she agreed it was all part of one action, that is, getting to his feet and his hand coming into contact with her buttocks;[29]

(r) it was put to her that the incident when she was touched on the bottom "simply did not take place, at all"; she disagreed;[30] and

(s) the complainant was cross-examined about the fact that she had been seeing a counsellor in 2012; she was asked if she mentioned any of "these matters involving wrongful acts" to the counsellor, and she said she did.[31]

[11] The applicant's lawyer then put a series of propositions to the complainant which included:

(a) on one occasion she was lying in bed on her stomach when the applicant came in; she was having a rough time at school and the applicant gave her a comforting rub on the small of her back; the complainant agreed;[32]

(b) the applicant made no sexual comments at all, but rather was telling her to get up and get ready for school, and he gave her an affectionate rub on her back; the complainant agreed with that, but said "I just don't understand why he goes under my shirt to rub my back";[33]

(c) that was the only time that the applicant ever touched the complainant in her room, and the other occasion did not happen; the complainant disagreed saying "the other occasion did happen … but the other bit is true";[34]

(d) she had not raised any of these matters with anyone before she did with the police in [North Queensland town]; the complainant disagreed;[35] and

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25 AB 159, lines 40-46.
26 AB 160, lines 26-30.
27 AB 161-162.
28 AB 162-163.
29 AB 163, lines 15-17.
30 AB 163, line 43-44.
31 AB 164.
32 AB 165, lines 1-15.
33 AB 165, lines 17-20.
34 AB 166, lines 1-6.
35 AB 168, lines 41-43.

(e) she wanted to paint a dim picture of her life with her step-father, so that she could stay with her father in [a North Queensland town], and therefore she and the brother had "knocked your heads together and made up a few stories about your stepfather"; the complainant disagreed.[36]

Evidence of the brother

[12] The brother's evidence was in the form of a police interview as well as pre-recorded oral evidence.

[13] In his police interview he said he was speaking to police because he was a witness to "what was going on back in [a Central Queensland town] involving my step-father and my sister". He explained that as being that he "caught him only once or twice looking through the key hole in the bathroom when she's in there getting dressed".[37] He described it as a "quick little [peek] and then walked away".[38]

[14] The brother also said that nothing could be seen through the keyhole in any event, and he knew this because "when she was out of the bathroom she like … asked me to check".[39]

[15] The brother said he was sitting at his computer when he saw the applicant looking through the keyhole, with one eye closed. He told his mother and the complainant. The complainant asked him if he could actually see through the keyhole and he said, "I couldn't, it was just complete black".[40]

[16] In his oral evidence the brother said everything he had related in the police interview was correct. In cross-examination the following points emerged:

(a) he reiterated that you could not see anything through the keyhole;[41]

(b) he reiterated that he was playing at his computer when he saw the applicant try to peek through the keyhole;[42]

(c) he described it as lasting several seconds and said that a couple of weeks later he disclosed the event to his mother;[43]

(d) he said that he had seen it happen another time and told his mother, whose reaction was not one of belief;[44]

(e) it was put to him that he had made up the account of the applicant peeking through the keyhole, in order to lend support to the complainant's claims; the brother disagreed;[45] and

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36 AB 168, line 45 to AB 169, line 4.
37 AB 290, lines 64-66.
38 AB 291, line 77-78.
39 AB 291, line 83-84.
40 AB 292-293.
41 AB 173, lines 22-33.
42 AB 174, lines 10-19.
43 AB 175, lines 8-19.
44 AB 176, lines 10-17.
45 AB 177, lines 34-38.

(f) the brother agreed that it was only after he had made the claims of the applicant peeking through the keyhole that it was ascertained that you could not see through the keyhole.[46]

Other evidence

[17] The only other witness was Senior Constable Cattell, the investigating officer. His evidence concerned the recording of an interview with the applicant. The recording was played for the jury and they were given a transcript as an aid to understanding what was said. SC Cattell also produced the complainant's birth certificate to establish her age.[47]

The applicant's police interview

[18] The applicant was interviewed by police on 22 October 2012. In the course of the interview the applicant mentioned that the family were "dealing with a child who suffers from anxiety" and the matters they were dealing with involved "misunderstandings within the family".[48] He went on to explain what he meant:[49]

(a) the complainant suffered from anxiety, and her mother was needed to calm her down;

(b) when the complainant last visited her father at [a North Queensland town], she "produced … a pornographic video of sorts", which shocked the applicant and the complainant's mother;

(c) not long after that "she was in … the bathroom at home … I accidently walked past but she had the door wide open and … had no top on and … I felt I needed to speak to her about it"; so the next day he had "a little chat" with the complainant, telling her that she had to keep doors closed and herself covered up because she was "growing up to be a very attractive young lady … that was my exact words";

(d) the conversation was about keeping a bit of decorum, but "unfortunately … she heard something completely different to what I said and … in the afternoon at school she had a sort of a bit of a flip out … and she said [to some friends] that her stepfather told her he was attracted to her … that night she didn't want to come home";

(e) eventually the complainant calmed down and she came home and "we talked about it openly and … she had a counsellor she sees regularly … and … she had a visit with her and … talked at length to her about it as well"; and

(f) the applicant added, that because she talked about it to her school friends it came to the attention of the school counsellor and the school based police officer; he also said that the complainant spoke to her grandmother about it.

[19] The applicant told police that they had since relocated to [a regional town]. When asked what the purpose was of moving, the applicant explained that:[50]

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46 AB 178, lines 1-3.
47 Exhibit 5.
48 AB 310, lines 29-56.
49 AB 311-312.
50 AB 313, line 46 to AB 314, line 3.

> "… basically … with this situation that I mentioned … we had a little … bit more of a flare up. … I guess it was uncomfortable situation for her and … we tried to keep it, you know, … we basically just did whatever she needed us to do and … one morning, I mean I used to see them off to school and they'd be dressed in their school uniform and I always said, you know, 'You look nice' or 'You look lovely' or something and, … just to make her feel better about herself. On this one occasion I just happened to say 'Oh, you're looking sexy today', or something and she took it in a completely different way to what I meant … I didn't even mean that particular word to come out anyway but you know just looking for something different to say, … than the usual and she kind of had another flip out at school and told some more school friends and she got all up in arms and that's when she had a really long heart to heart talk with [her Aunt] …".

[20] The applicant was asked again about the pornographic video comment. He explained how it came to be found and who it was sent to. He explained "we didn't rant and rave at her but we did up her a bit of [an] answer sheet and just said, you know, … what could be the repercussions of this … what happens if this video gets on the Internet … like what if the wrong people get hold of it".[51] When it was discovered the complainant's mother played it in front of the complainant and talked to her about it.[52]

[21] The applicant was asked again about the bathroom incident. He explained that the complainant was standing in the bathroom and the door was "wide open", and "she just kind of like when I walked past, you know, and like she kind of giggled or laughed a bit, yeah".[53] He explained he was going to the toilet at the time, and to do that he needed to walk past the bathroom.[54] He explained she had something on her lower half, but nothing on the top half.[55] The applicant said he did not mention it to the complainant until the next day when he told her that she had to keep doors closed and cover up. He said at the end of that conversation he gave her a little hug and asked if she understood what he was talking about.

[22] When asked about why the complainant had a "flip out" at the school, the applicant said:[56]

> "… I honestly think she misinterpreted what I said … that she thought I said I was attracted to her and … I wasn't saying that at all. I was just saying … she's growing up to be an attractive young lady and she has to watch out for these things …."

[23] The police then put to him that her brother had observed the applicant attempting to peek through the bathroom door. The applicant responded, "I don't think that

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51 AB 315.
52 AB 316.
53 AB 317, lines 10-20.
54 AB 318.
55 AB 319, lines 25-38.
56 AB 322, lines 37-42.

would be true at all". He added, "I mean I may have been speaking to her while she was in there or something but … definitely not."[57]

[24] The applicant denied that he would attempt to look through the keyhole when the complainant was showering.

[25] Police raised the suggestion from the complainant that she had observed the applicant "lingering outside the door and … attempting to look in at her". The applicant said he could not recall any such occasion, and denied attempting to look at her while she was having a shower.[58] The applicant then added:[59]

> "There was only those couple of incidents I mentioned really but I was aware that she sort of had this uncomfortableness about certain things … she didn't like it if I sort of hugged her around the midriff sort of thing, like after that and she'd say things to – like if I did that then she'd say to … her mum 'Oh, he's doing it again' or something … I didn't quite understand what that was all about …".

[26] Police put to him the allegation that he had gone into her bedroom one morning and laid down beside her. He denied that happened. He also denied lying down with her in a spooning position.[60]

[27] The applicant also denied ever putting his hand on her buttock area.[61]

[28] The police put the complainant's account as to the applicant sitting on the bed and rubbing her back. As to that the applicant said:[62]

> "… the only one occasion that … was when her alarm went off at 6.30 so it certainly wasn't early in the morning … like it was a case of creeping into her room early in the morning. You know, it was her alarm went off and it just kept going and going and going and going and … you know that's when I came in to turn the alarm off and you know I just … rubbed her back and talked to her for a while, … I don't feel it was in my best judgment to do that but … I wasn't trying to do anything. I was just trying to have … a conversation with her … while she was calm … just talk about some issues …".

[29] The applicant explained that there had a been an "ongoing feud" with the complainant about certain rules and it was reaching a "level of frustration for both of us", so he decided to have a heart-to-heart talk with the complainant, trying to get to the bottom of things.[63] He explained that he was rubbing her back under her shirt, and that was the only occasion when that happened.[64] He explained that he just wanted to talk to her and to be soothing and there "wasn't any real reasoning or thinking behind it". He added, "I mean later on when I thought about it I thought

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57 AB 325, lines 1-7.
58 AB 326-327.
59 AB 327, line 55 to AB 328, line 4.
60 AB 329.
61 AB 331, line 36-39.
62 AB 332, lines 6-18.
63 AB 332, lines 23-35.
64 AB 332, lines 45-57.

maybe it's not the most appropriate thing to be doing … I wasn't really using my best judgment with her".[65]

[30] The police interviewer asked the applicant to go back through some of the details of the incidents he had mentioned, starting with when he had seen her through the bathroom door. The applicant did so, explaining it in the same terms.[66]

[31] The applicant also explained again the question of finding the video done by the complainant and involving the mother in the response to it.[67]

[32] The applicant returned to the question of rubbing the complainant's back under her shirt, and in response to police questions about his comment that it was not his best judgment, said:[68]

> "Well … I didn't really think it through at the time … I wasn't really … thinking about … something I maybe shouldn't have been doing, you know. … or that it could be misconstrued in a certain way … I just basically wanted to talk to her and I wanted to be soothing and, … it sounds stupid now but just at the time I wasn't sort of thinking my best and wasn't using my best judgement … I freely admit that. But … subsequent to that, I did … agree … I basically said to her, 'I won't go in your room at all, you know, like in the mornings.'"

[33] The applicant was asked for his opinion as to whether the back-rubbing incident was appropriate. He responded:[69]

> "… well no, I don't – I don't feel it was appropriate. I mean, … there was never any inappropriate touching … I've never done anything like that. But … the fact it was sort of on the back, under the shirt, you know, … that was inappropriate. But, you know, … as far as talking to her that time of the morning, … I wouldn't have considered that to be … wildly inappropriate because … we did try and maintain a good relationship with them. And there were times when they were more receptive than other times … I don't feel any wrongness in that but … I guess subsequently … it became clear that … I'd be better off not to even enter a room and not … to give any wrong impressions."

[34] The applicant denied that he had been lingering outside the bathroom at any time watching the complainant.[70] He also denied, again, the brother's allegations that he was trying to look through the keyhole.

[35] Finally, the police interviewer asked whether he was attracted to the complainant. The following exchanged occurred:[71]

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65 AB 333, lines 1-8.
66 AB 333-335.
67 AB 338-340.
68 AB 351, lines 16-28.
69 AB 352, line 54 to AB 353, line 12.
70 AB 355.
71 AB 356, line 54 to AB 357 line 25.

> "… Well it's kind of hard to define because I mean when … she made this video and … I started to feel about her in a … slightly different way to … I mean before that she was just our daughter, she was you know … I guess a little bit of the gloss came off her and … I saw her in a different light and then when … that happened … that I saw her with … no top on it … did affect me to some degree …
>
> Police: … I'll put the question again … do you find her attractive … in … a sexual way.
>
> Applicant: … well she is … she's quite a well-developed young girl and I mean … I guess I do to some degree … to be perfectly honest. But, … I've never done anything … wrong towards her or inappropriately touched her … I don't even know why we're having this conversation … it's something that we were trying to work through as a family…".

[36] Later in the interview the applicant was asked whether he believed that it was anything that he had done that was inappropriate, and he nominated "rubbing on the back" and that he sincerely regretted it.[72]

[37] The police interviewer returned to the question of whether had formed a sexual attraction for the complainant and drew this answer:[73]

> "… I wouldn't say an outright attraction but … there is some level of attraction but it's … yeah.
>
> Police: Did you have any sexual … gratification … from rubbing her on the back?
>
> Applicant: No, no."

Grounds 1 and 5 – insufficient representation

[38] One of the main planks of the applicant's challenge to his conviction is that his representation by his lawyer was manifestly inadequate. It is also contended that the lawyer's refusal to put the applicant on the stand was extremely damaging to his case.

[39] In my view, these contentions cannot be sustained. There are number of reasons for that conclusion.

[40] First, whilst the applicant complains about the overbearing and autocratic behaviour of his lawyer, none of that matters if the complainant was properly tested as to her account, by reference to the applicant's version of events. Reference to the cross-examination of the complainant in her pre-recorded evidence does not support the view that the applicant's case was not put or that the complainant's account was not properly tested. A number of features of the cross-examination can be noted:

(a) the complainant was cross-examined on the fact that her creation of nude images or a video of herself, sent to school friends and a boy, were the subject

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72 AB 361, lines 5-12.

73 AB 361, lines 42-58.

of disapproval by the applicant and the complainant's mother; further, it was put to the complainant that her relationship with the applicant "soured or got worse from that time";

(b) the complainant was cross-examined about the incident concerning looking through the bathroom door while she was partly dressed, and it was put to her that the applicant simply walked past on the way to the toilet; that was the applicant's account of that incident;

(c) it was put to the complainant, and she agreed, that as a result of that incident there was a discussion involving the applicant, her mother and herself, about the desirability of keeping the bathroom door closed and maintaining decorum; that was the applicant's case, and the complainant agreed with it;

(d) it was put to the complainant, and she agreed, that there was stress between herself and her mother and the applicant, about her desire to spend more time with school friends at parties and shopping; that was the applicant's case, and the complainant agreed with it; she also agreed, as was put to her, that the mother and the applicant would not permit her greater freedom;

(e) in relation to the bathroom incident, it was put to the complainant that she giggled when she saw the applicant at the door; that was the applicant's case;

(f) it was put to the complainant that there were occasions when her alarm sounded in the morning and the applicant came in to turn it off; that was the applicant's case, and she agreed with it;

(g) as to the incident when she said the applicant lay down with her on the bed, cross-examination tested the boundaries of her evidence; that cross-examination went for several pages of the transcript; it was put to the complainant that the incident did not occur; that was the applicant's case;

(h) it was put to the complainant that there was an occasion when the applicant came into her room to turn the alarm off, she was lying on her bed face down, and the applicant gave her a rub on the small of her back, under her shirt; the complainant agreed with that; that was the applicant's case, and it was put;

(i) it was put to the complainant that there was no touching on the bottom; whilst she disagreed, that was the applicant's case; and

(j) it was put to her that she had got together with her brother and made up some stories about the applicant so that she could leave and go and live with her father in [a North Queensland town]; that was the applicant's case.

[41] What is evident from that review above is that applicant's case was put to the complainant, and to the jury, within the limits of what he had said in the police interview.

[42] Secondly, the difficulty confronting the applicant's lawyer was that the applicant had voluntarily participated in a lengthy interview with police and given very fulsome answers that could be used against him. Those answers contained matters that ultimately harmed the chance of an innocent explanation of his interaction with the complainant: see paragraphs [18](c), [19], [21], [25], [28], [32] and [35]-[37] above.

[43] Thirdly, the applicant complains that his lawyer would not let him give evidence at the trial. Given the interview with the police, that is entirely understandable position to take. Things could only have gotten worse if the applicant was allowed in the witness box. That is especially so given, as will be dealt with later, the applicant's contention that his unknown autism rendered him likely to say more than was good for him.

[44] Fourthly, whilst the applicant's lawyer might have been under pressure elsewhere in relation to his conduct as a solicitor in other cases, one cannot infer from those cases that there was a lapse in performance in the applicant's case. As can be seen from a review of the trial, the applicant's case was put, and such challenge as could be made in the constraints of the police interview, was made.

[45] The applicant complains that his lawyer did not obtain a record of visits made by the complainant to her counsellor. There was evidence that the complainant was seeing a counsellor, but there was no evidence as to what was discussed in those sessions, let alone whether it would assist the applicant's case. There is no basis to conclude that it necessarily would have done so. The best that the applicant could say, when pressed in argument before this Court, was that the counsellor might say that the complainant had never mentioned the bottom touching incident to her. Assuming that to be so for present purposes, it does not assist the applicant. It simply means that the complainant made no preliminary complaint to a particular person. It does not detract greatly from the evidence she gave.

[46] Fifthly, the applicant complains about the emphasis placed by the prosecutor on things said in the police interview. This point goes nowhere. The applicant participated in the interview and the video recording of it was played to the jury. The jury were directed, properly, that the transcript was not evidence, and the only evidence that they could act on was what they saw and heard in the video. That a submission was made placing particular emphasis on some part of the transcript is not surprising, nor does it bespeak an absence of skill or attention on the part of the applicant's lawyer.

[47] These grounds lack merit.

Ground 2 – diagnosis of Autism Spectrum Disorder

[48] The applicant contends that his diagnosis of Autism Spectrum Disorder, made in 2018, renders the trial unfair.

[49] As the applicant accepted in the course of oral argument before this Court, he had no idea that he suffered from autism at the time of the trial. The diagnosis was made three years after the trial. His contentions in this regard attempt to draw support from a report prepared by Mr SMA, a clinical psychologist. The purpose of the report is not only to evidence the diagnosis, but to make comments upon the effect of that condition. For example, the applicant points to that part of the report which describes an aspect of someone with that disorder:

> "The interpersonal rigidity, naivety, bluntness and elaborate over-inclusion of detail, can often create impressions or perceptions of guilt in investigation officers, legal professional and a jury."

[50] The principal thrust of the applicant's contentions is that his answers in the police interview should somehow be seen in a different light because, even though it was not known at the time, he was suffering from autism.

[51] The applicant's contentions must be rejected for a number of reasons.

[52] First, the fact that the applicant suffered from autism in 2012 (when the police interview was conducted) was not something known at the trial. But it does not matter. The applicant willingly participated in the police interview, and did not seek legal representation or the assistance of anyone else at the time. As the transcript shows, he was asked questions and responded fulsomely. The answers he gave constituted his case on the one charge that was brought against him, and his response to other allegations of his interaction with the complainant. It is too late to try and reassess the answers he gave.

[53] Secondly, contrary to the applicant's contention that he was convicted because of his autism, the reality is far simpler. The complainant gave a police interview in which she described the events generally, and, more specifically, the conduct the subject of the one charge brought against the applicant. Her oral evidence was pre-recorded, and notwithstanding cross-examination, she adhered to her account. There was some slight support from the evidence of her brother. The jury had the applicant's full account, giving his version of the events. That version of events was put to the complainant during the trial. The applicant was convicted because the jury accepted the evidence of the complainant and was satisfied to the requisite degree that the applicant was guilty. The jury certainly had the benefit of watching the video recording of the applicant's police interview, but nothing in that called for some moderation of assessment by reason of an unknown underlying mental disorder.

[54] Simply put, the applicant was convicted because the complainant gave evidence of the offence, and was believed.

[55] Thirdly, in the course of his oral submissions before this Court, the applicant maintained that what he said in the police interview was the truth. Given that he participated voluntarily, and responded to the questions asked, it is difficult to see that he was disadvantaged in the conduct of his case. It is true that the answers he gave in response to question about whether he was sexually attracted to the complainant did not assist his defence. However, the applicant maintains that what he said was the truth.

[56] Fourthly, the applicant's reliance on Mr SMA's report must be viewed with some caution. Some of the material which the applicant seeks to adduce as new or fresh evidence consists of emails sent by him seeking legal or other assistance. Some of those emails reveal that Mr SMA was supporting him in those attempts, permitting his name to be used by way of introduction and, in one case, as a "mutual friend". There may, therefore, be reason to doubt Mr SMA's impartiality.

[57] This ground lacks merit.

Ground 3 – unsafe and unsatisfactory verdict

[58] The applicant challenges the verdict on the basis that the jury could not have reached the status of satisfaction as to his guilt. He points out the limited evidence

by the complainant,[74] the absence of evidence from the counsellor, and the fact that the brother's evidence raised an impossibility.

[59] The legal principles applicable where the ground in that the verdict was unreasonable are well known. They were recently restated in *Dansie v The Queen*.[75] *Dansie* reaffirmed the approach set out in *M v The Queen*:[76]

[60] The Court reaffirmed the relevant task as being that laid down in *M v The Queen*:[77]

> "8 That understanding of the function to be performed by a court of criminal appeal in determining an appeal on the unreasonable verdict ground of a common form criminal appeal statute was settled by this Court in *M*. The reasoning in the joint judgment in that case establishes that 'the question which the court must ask itself' when performing that function is 'whether it thinks that upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty', that question being 'one of fact which the court must decide by making its own independent assessment of the evidence'.
>
> 9 The joint judgment in *M* made clear that 'in answering that question the court must not disregard or discount either the consideration that the jury is the body entrusted with the primary responsibility of determining guilt or innocence, or the consideration that the jury has had the benefit of having seen and heard the witnesses'. The joint judgment equally made clear how those considerations are to impact on the court's independent assessment of the evidence. That was the point of the carefully crafted passage in which their Honours stated:
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> > 'It is only where a jury's advantage in seeing and hearing the evidence is capable of resolving a doubt experienced by a court of criminal appeal that the court may conclude that no miscarriage of justice occurred [on the unreasonable verdict ground]. That is to say, where the evidence lacks credibility for reasons which are not explained by the manner in which it was given, a reasonable doubt experienced by the court is a doubt which a reasonable jury ought to have experienced. If the evidence, upon the record itself, contains discrepancies, displays inadequacies, is tainted or otherwise lacks probative force in such a way as to lead the court of criminal appeal to conclude that, even making full allowance for the advantages enjoyed by a jury, there is a significant possibility that an innocent person has been convicted, then the court is bound to act and to set aside a verdict based upon that evidence. In doing so, the court is not substituting trial by a court of

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74 Which he says was minimal "to the point of being almost non-existent".
75 [2022] HCA 25; (2022) 274 CLR 651.
76 (1994) 181 CLR 487.
77 *Dansie* at [8]-[9]. Citations omitted.

> appeal for trial by jury, for the ultimate question must always be whether the 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.'"

[61] The High Court also said:[78]

> "12 The authoritative guidance to be gained from the joint judgment in *M* has not diminished with time. *M* was unanimously affirmed in *MFA v The Queen* and again in *SKA v The Queen*, where it was spelt out that the 'test set down in *M*' required a court of criminal appeal to undertake an 'independent assessment of the evidence, both as to its sufficiency and its quality' and that consideration of what might be labelled 'jury' questions does not lie beyond the scope of that assessment. *Coughlan v The Queen* illustrates that an independent assessment of the evidence in a case in which the evidence at trial was substantially circumstantial requires the court of criminal appeal itself 'to weigh all the circumstances in deciding whether it was open to the jury to draw the ultimate inference that guilt has been proved to the criminal standard' and in so doing to form its own judgment as to whether 'the prosecution has failed to exclude an inference consistent with innocence that was reasonably open'."

[62] In *Pell v The Queen*[79] the Hight Court said:

> "39 The function of the court of criminal appeal in determining a ground that contends that the verdict of the jury is unreasonable or cannot be supported having regard to the evidence, in a case such as the present, proceeds upon the assumption that the evidence of the complainant was assessed by the jury to be credible and reliable. The court examines the record to see whether, notwithstanding that assessment – either by reason of inconsistencies, discrepancies, or other inadequacy; or in 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."

[63] In *R v Miller*[80] this Court said:

> "[18] An appellant who contends that the verdict of the jury was unreasonable or that it was unsupported by the evidence must identify the weaknesses in the evidence and *must then also* demonstrate that these weaknesses reduced the probative value of the evidence *in such a way* that the appellate court ought to conclude that *even making full allowance for the advantages enjoyed by the jury* there is a *significant possibility* that an innocent person has been convicted. The mere identification

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78 *Dansie* at [12]. Citations omitted.
79 [2020] HCA 12; (2020) 268 CLR 123, at [39]. Citation omitted.
80 (2021) 8 QR 221; [2021] QCA 126 at [18]. Citation omitted.

> of weaknesses in the prosecution case is not enough to sustain the ground. As Brennan J said *in M v The Queen*, and as criminal practitioners and trial judges know very well, it is a sad but salutary experience of counsel for the defence that the prosecution's 'weak point' is often brushed aside dismissively by a jury satisfied of the honesty of the prosecution witness."

[64] The difficulty confronting the applicant's appeal on this proposed ground is that the complainant gave a consistent story from the police interview to her cross-examination in the pre-recorded evidence. Her account was relatively simple, that on the one occasion the application had touched her on the bottom as he stood to get up from where she was lying. The account was not elaborate, nor complex. The jury had the advantage of seeing and hearing her give evidence and were well placed to make an assessment or whether they considered she was telling the truth.

[65] The complainant's account on the surrounding incidents had support from what the applicant told the police in his interview. He accepted that there was an occasion where he saw her partly naked in the bathroom. It is true that he said that was accidental but the jury did not have to accept that. Support also came from the fact that the applicant admitted there was an occasion where he sat on the bed and rubbed the complainant's back, under her shirt.

[66] The complainant was cross-examined and the applicant's version of events were put to her. Specifically, the complainant was confronted with the applicant's case, that the offending conduct did not take place at all, and her account was the product of collaboration with her brother in an effort by the complainant to leave and live with her father in [a North Queensland town]. Whilst the complainant evidently resented what she saw as overbearing restrictions on her freedom, and blamed the applicant in part for that, she denied that there was an ulterior motive behind the making of the complaint.

[67] Given the applicant's admission that at least to some extent he had a sexual interest in the complainant, it cannot be said that the jury had to reject the complainant's evidence on the sole count under the indictment. It was open to the jury to accept her evidence as credible, and be satisfied to the requisite standard that the applicant was guilty.

[68] The applicant has not been able to bring the case within what was said in *Miller*: see paragraph [63] above. It is not enough to identify weaknesses in the evidence and inconsistencies. To succeed on this ground one must go further. The weaknesses must be such that it can be demonstrated that they reduced the probative value of the evidence in such a way that this court ought to conclude that, even making for allowance for the advantage enjoyed by a jury, there is a significant possibility that an innocent person has been convicted. That test has not been met. I do not consider that it can be concluded that an innocent person has been convicted.

[69] This ground fails.

Ground 4 – the brother's evidence

[70] The applicant contends that the brother said on multiple occasions that one could not see anything through the keyhole and it was "just black". This is the foundation

for a submission that what the brother claimed to have witnessed was completely impossible. I understand this submission to be that, it was inherently unlikely that he would have attempted to look through a keyhole which one could not see through.

[71] The applicant further contends that the brother should not have been a witness at all because his evidence had no probative value whatever.

[72] The applicant adds a description of the brother at the time of the trial as "a 14 year old autistic boy who needs glasses to see properly".[81] There was no evidence to that effect.

[73] For a number of reasons these contentions must be rejected.

[74] First, no application was made prior to the trial to exclude the brother's evidence. Further, no objection was made at the time he was called during the trial.

[75] Secondly, that nothing could actually be seen through the keyhole is not an answer that renders the brother's evidence either impossible or irrelevant. It was evidence that the jury might accept as showing the applicant's interest in observing the complainant naked. Put another way, it was evidence tending to show that he had a sexual interest in the complainant.

[76] Thirdly, the brother was a relevant witness to be called, given that the applicant's case was that the story was concocted between the complainant and the brother.

[77] This ground fails.

Additional ground - witnesses not called

[78] The applicant submits that a miscarriage of justice occurred because potential witnesses with knowledge of the circumstances could have been called but were not. The applicant points to the complainant's mother and aunt, each of whom are said to have spoken to the complainant "in quite some depth about these matters". The applicant also points to:

(a) the school-based police officer in [a Central Queensland town];

(b) the school counsellor;

(c) the complainant's grandmother; and

(d) the complainant's own counsellor.

[79] In an affidavit filed 11 March 2024 the applicant deposes that the complainant's mother and grandmother went to his lawyer's office prior to the trial, stating that they wish to "help clear my name". Further, the complainant's aunt provided a draft copy of an affidavit supporting the applicant. He complains that his lawyer did not take a statement from the mother or grandmother and said that the statement from the aunt was "of no use as she wasn't living in the house". The applicant complains that his lawyer did not call any of those people.

[80] The aunt's draft affidavit dealt with these matters:

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81 Outline, paragraph C/2.

(a) after the complainant had made accusations about the applicant she spoke to the complainant about what had happened;

(b) the complainant told her that the applicant had been rubbing her on the back during one conversation and another time made a comment about how she looked by saying that she looked "sexy";

(c) she asked the complainant if she really felt the applicant had been acting inappropriately, and whether she felt frightened that he would do something to her; the complainant's response was that she did not feel that the applicant was a threat and deep down she did not think he would do anything wrong by her;

(d) when asked why she had said the things she said, the complainant referred to the restrictions placed on her by the applicant and her mother; she said those things in an effort to remove the applicant from the picture; and

(e) the discussion then involved whether the complainant might have taken things out of context, which the complainant accepted.

[81] The utility of the aunt's draft affidavit is doubtful. She was not living in the house, as the applicant's defence lawyer told him, and therefore was not a direct witness to anything. Her evidence was simply of a conversation after the complaint had been made, in which the complainant said she did not feel threatened by the applicant and may have taken things out of context. That does not amount to a retraction of her account, and would serve only to cast some doubt on the credibility of the complainant, in the sense that it was a subsequent inconsistent statement.

[82] As for the complainant's mother and grandmother, there is no suggestion that they were willing potential witnesses. Nothing in the material advanced on the application to adduce further evidence suggests that the evidence of the mother (in particular) would have assisted the applicant's defence.

[83] As for the school-based police officer and school counsellor, nothing has been advanced to suggest that they had relevant evidence to give. The suggestion of them as witnesses who should have been called is completely speculative.

[84] As for the complainant's own counsellor, the position is slightly different. There was evidence at the trial that the complainant was seeing a counsellor and the complainant said that she had told the counsellor about the incidents with the applicant. On that basis it is hardly surprising that the defence lawyer did not seek to call the counsellor. That evidence would have supported the complainant's account.

[85] In this Court, the applicant suggested that the counsellor would say, if called, that the complainant did not tell her about the incidents. Even if that were true, it is not persuasive evidence such as would severely impact on the credibility of the complainant. It would simply be a case of another way to attack the credit of the complainant. In any event, the jury had the evidence of the complainant that she had mentioned the wrongful acts to her counsellor.[82]

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82 AB 164, lines 27-34.

[86] Ultimately the applicant is unable to demonstrate what evidence the six nominated witnesses could give, that would assist in his defence. In particular, when one takes into account that the applicant maintains that he told the truth in the police interview, the support that gave to the complainant's account, and his acceptance of a sexual interest in the complainant, means that the suggested additional evidence was most unlikely to have an impact on the trial.

[87] This ground fails.

Extension of time

[88] The applicant was convicted on 19 March 2015 and sentenced on 20 March 2015. The notice of appeal was not filed until 1 November 2023, eight and-half years after he was convicted. In the interim the applicant took a number of steps:[83]

(a) on 15 April 2015 he initiated contact with Sentence Management when he was in custody, indicating he wished to appeal; when a complaint was made about the lack of response by Corrective Services, on 2 May 2017 Corrective Services responded acknowledging that a request was made to speak about the lodgement of an appeal, and access to legal representation, but indicted there was "also evidence that a correctional counsellor … attempted to follow up with you"; in any event, nothing happened;

(b) the applicant requested a visit from Legal Aid to investigate the possibility of an appeal; that also went nowhere;

(c) over the following years the applicant made attempts to engage Legal Aid and other legal practitioners in support of an appeal, to no avail;

(d) the applicant also made submissions to the Attorney-General and, in 2017, made an application to the Governor of Queensland, requesting a pardon; these approaches were unsuccessful; and

(e) the applicant's attempts to engage assistance included doing so via a public appeal for help in newspaper story; this also came to nothing.

[89] What is evident from that short summary, is that the applicant was fully aware that he had a right of appeal from a time when he was still within the statutory period to lodge an appeal. He says was dissuaded against doing so by his trial lawyer, and then spent the next seven or eight years unsuccessfully attempting to obtain assistance. Plainly at all times during that period the applicant was conscious of the fact that he could appeal, yet at no time did he lodge a notice of appeal to preserve his rights. Instead, he took steps such as making submissions to the Attorney-General and an application to the Governor for a pardon.

[90] The delay is unconscionably long. It is a period of over eight years during which time the applicant was fully aware of the fact that if he wished to challenge his conviction he should do so by an appeal.

[91] The reason for the delay in filing a notice of appeal is, consequently, not satisfactorily explained.

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[83] These are drawn from the applicant's outline and from material he seeks to adduce on an application to put in fresh evidence.

[92] If the applicant's case revealed that there was a miscarriage of justice at the trial, a period of extended delay would not necessarily stand in the way of an extension of time within which to bring an appeal. However, for the reasons developed earlier, the applicant's grounds for an appeal lack merit in every regard.

Applications to adduce evidence

[93] By application filed 19 February 2024, the applicant seeks to adduce the report by the clinical psychologist, Mr SMA. For the reasons I have explored earlier, the report is irrelevant. It confirms the diagnosis of Autism Spectrum Disorder made in 2018. Self-evidently that is more than three years after the trial and some five years after the offending conduct. The purpose of the report is not just to confirm the diagnosis, but to offer views about how a person with Autism Spectrum Disorder might respond to the investigation process, interviews and cross-examination. Curiously, Mr SMA was not asked to have regard to the police interview, but only the closing addresses at the trial.

[94] Mr SMA's opinion on whether the closing addresses are indicative of the problems people living with Autism Spectrum Disorder face in their dealings with the legal and judicial process are irrelevant to any issue. It simply does not matter that the applicant may have answered more fulsomely than someone else in the police interview. He chose to participate in that interview, elected not to have representation during the interview, and now maintains that what he says was the truth.

[95] On 6 March 2024 an application was filed seeking to adduce a journal article by Dr Smith. The article consists of a critical discussion of contemporary challenges to fair and effective criminal proceedings for autistic suspects and defendants. It may be, as contended by the applicant, that a feature of someone with Autism Spectrum Disorder is that their responses to questions may be affected by a desire to agree with assertions or suggestions, to accept the truth of accusations, or to volunteer more than should be volunteered. But that does not matter to any issue in this case. Once again, the applicant chose to give the interview and maintains that what he said was true.

[96] An additional difficulty is that the applicant simply wishes to tender the article, without evidence from the author proving the factual basis for the opinions in the article, and that the opinions are genuinely held.

[97] The document is inadmissible and irrelevant. I would refuse this application.

[98] On 11 March 2024 an application was filed seeking to adduce an affidavit by the applicant in the form of new or fresh evidence. The affidavit first swears to the 11 points raised in his outline of argument. In my view, the better course is not to treat that part of the affidavit as seeking to adduce new evidence, but rather as extra submissions on the grounds raised. However, to the extent that some of the annexures are sought to be adduced in evidence, that is a different matter.

[99] Annexures A and B relate to the draft affidavit of the aunt, which I have dealt with earlier. It is a draft affidavit that was never completed, and therefore irrelevant.

[100] Annexure C is an email communication about which the applicant says nothing. It may be set aside.

[101] Annexure D is a list of remedial recommendations for the complainant, evidently prepared in relation to the complainant's school performance. The applicant contends that it shows that the complainant's recollection of a conversation with the applicant "could not possibly be correct". It shows no such thing. What it deals with is the complainant's ability to cope with forms of teaching in a school atmosphere. It says noting about matters outside that context and is irrelevant.

[102] Annexure E is a letter related to advice which the applicant says he received from the complainant's mother, to the effect that the complainant "wished to withdraw the charges". The applicant says that his defence lawyer advised that the letter should be signed in front of a solicitor, but that was not done. The applicant says, with reference to exhibit E, that "the letter I ended up receiving, while informative, was ultimately of no use".

[103] Annexure E, itself, is a handwritten letter purportedly signed by the complainant. It is addressed "To whom it may concern", and contains a plea that the applicant not be charged "as he is innocent". Whilst it refers to him as "innocent", it also contains these words:

> "My family says that its just a misunderstanding. I don't really think thats true but when I reported [the applicant] to the [North Queensland town] police, they said that [the applicant] didn't do enough to be charged, and at that time I said the whole truth, and I said the exact same things to the [costal regional town] Police Department as I did in [a North Queensland town]."

[104] One can easily see why the applicant's defence lawyer did not wish to use the letter. The letter could easily be seen as the consequence of pressure being put on the complainant by the family. Further, in it she maintains that she told the police the truth. Far from assisting the applicant's case, the production of that letter to the jury could only harm it.

[105] Annexure F consists of a series of messages by members of the family in [a North Queensland town] which, the applicant contends, is "strong evidence of a hatred boarding on vendetta from this Family towards me". The text messages are completely irrelevant. The complainant gave her evidence in the witness box and was challenged as to whether her account was true or made up. The attitudes of the family in [a North Queensland town] do not matter to the issues that the jury had to consider.

[106] Annexure G is a copy of a Queensland Government listing page for the [Redacted] Centre in [a Central Queensland town], a service providing counselling. It seems that the applicant may have been seeing a counsellor at that centre. The applicant deposes that he and the complainant's mother met with that counsellor who "had expressed that she 'had no concerns whatsoever at any stage' and that she 'knows what [the complainant] can be like'".

[107] The evident purpose of this part of the applicant's affidavit and annexure G is to further the submissions that the trial miscarried because the counsellor was not called. I have explained earlier in these reasons why that is not so.

[108] Exhibits H and I relate to the applicant's attempts to persuade the Attorney-General to intervene. They are irrelevant to any issue that the jury had to consider.

[109] Exhibits J and K are extracts apparently from proceedings against the applicant's trial lawyer by the Legal Services Commission. They are irrelevant to any issue on this appeal.

[110] By application filed 11 March 2024, the applicant seeks to adduce as further evidence, an affidavit from Ms RM. She was for a time the applicant's employer at [a Central Queensland town] TAFE. The affidavit attaches a character reference. It has no relevance to the issues on this appeal, which concern the question of conviction. It may have been of some use in relation to the sentence, but that is not in issue before this court.

[111] On 12 March 2024 an application was filed seeking to adduce evidence of the applicant's approaches to legal firms over the years following the trial. If they have any relevance it is only to the question of an extension of time. For the reasons explained earlier they do not really assist the applicant.

[112] On 13 March 2024 an application was filed seeking to adduce further evidence of the applicant's attempts to obtain legal assistance, or assistance from the Attorney-General and the Governor. All of this material falls into categories I have already dealt with.

[113] For the reasons I have outlined I would refuse each of the applications to adduce new evidence.

Conclusion

[114] For the reasons I have expressed above, even if an extension of time were granted, the appeal would be bound to fail. I propose the following orders:

1. Applications for leave to adduce evidence are refused.

2. The application for an extension of time within which to appeal is refused.

[115] **FRASER AJA:** I agree with the reasons of Morrison JA and his orders.

[116] **KELLY J:** I agree with the reasons of Morrison JA and with the orders proposed by his Honour.