



HIGH COURT OF AUSTRALIA

14 August 2024

BQ v THE KING
[2024] HCA 29

Today, the High Court unanimously dismissed an appeal from a decision of the Court of Criminal Appeal of New South Wales. The appeal concerned whether opinion evidence given by an expert witness went beyond her accepted area of expertise concerning how victims of child sexual abuse may respond to that abuse and whether that evidence was therefore inadmissible.

Following a trial in the District Court of New South Wales, the appellant was convicted of multiple sexual offences against two of his nieces. During the trial, the respondent adduced expert evidence from Associate Professor Rita Shackel concerning how victims of childhood sexual assault as a class respond to and disclose their victimisation. Associate Professor Shackel has qualifications in law and psychology as well as a PhD concerning the use of expert testimony in child sexual assault cases. Her PhD included a review of research on how victims of child sexual assault respond to their victimisation. Amongst other matters, Associate Professor Shackel told the jury that "in the context of intrafamilial child sexual assault, the abuse often takes place within the home" and "in the course of everyday activities". When she was asked about whether the research suggested "whether or not it's uncommon that [intrafamilial child sexual assaults] happen in proximity to other people in the home", Associate Professor Shackel told the jury that "one of the strongest risk factors for child sexual assault taking place is opportunity, and that opportunity is linked to families, cohabitation, and the familiarity of the offender to the location."

On appeal to the Court of Criminal Appeal, the appellant contended these remarks, and similar parts of Associate Professor Shackel's evidence, were inadmissible because she was not qualified to give evidence concerning the behaviour of perpetrators of child sexual assault. The Court rejected that contention and held that those parts of Associate Professor Shackel's evidence referring to common circumstances in which child sexual assault takes place were "very likely to have been obtained by her study of the cases which are the basis of the research" and were "so closely related to the general discussion of the reactions and behaviour of children, that the evidence was not objectionable".

In the High Court, the appellant repeated his contention that these parts of Associate Professor Shackel's evidence fell outside her accepted area of expertise and therefore did not satisfy the test for admission under s 79 of the *Evidence Act 1995* (NSW). The appellant also contended the trial judge should have given the jury various directions in relation to that evidence, including that her evidence said nothing about the credibility of the complainants.

The High Court held that the portions of Associate Professor Shackel's evidence, to which the appellant objected, concerned possible responses of victims of child sexual assault and were within Associate Professor Shackel's accepted area of expertise. The Court also held that there was no occasion for the trial judge to give a direction that the expert evidence said nothing about the credibility of the complainants as, to the contrary, her evidence was relevant to such an assessment. Otherwise, the Court held that there was no appreciable risk of the jury putting the expert evidence to an illegitimate use that would warrant the trial judge giving any particular jury direction.

This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.