

## **TULLY v. THE QUEEN (B47/2005)**

Court appealed from: Court of Appeal of the Supreme Court of Queensland

Date of judgment: 13 May 2005

Date of grant of special leave: 10 March 2006

The appellant formed a relationship with the complainant's mother in early 1999. The applicant was subsequently convicted on four counts of indecently dealing with a child under 16 years of age (that is, the complainant), and on three counts of permitting himself to be indecently dealt with by a child under 16 years of age. The complainant was aged between nine and 10 when the offences occurred between January 1999 and June 2000.

The complainant told her mother about the applicant's conduct in April 2002. Her evidence-in-chief consisted of two tape-recorded interviews with New South Wales police officers in April and May 2002. The applicant was convicted on seven counts, but the jury was unable to agree on a verdict on another count of permitting himself to be indecently dealt with and on two counts of rape. At the trial, there was also evidence from the complainant of a number of acts of sexual assault and rape which were not charged. The applicant was sentenced to three years' imprisonment on each of the seven counts, to be served concurrently.

The Court of Appeal (Williams, Keane JJA & Helman J) dismissed the applicant's appeal against conviction. There were a number of grounds of appeal raised in the Court of Appeal, but the only ground raised in the application to this Court for special leave to appeal was the alleged inadequacy of, or failure to give, directions to the jury in relation to the uncorroborated evidence of the complainant, the evidence of the uncharged acts, and the applicant's failure to give evidence. The grant of special leave to appeal was confined to the first two aspects of that ground.

The grounds of appeal include:

- Whether the learned trial Judge adequately instructed the jury to scrutinise the evidence of the complainant given the delay in making her complaint, her age at the time, and the inconsistencies between her first complaint to the police and her evidence at trial;
- Whether the directions of the learned trial Judge to the jury in relation to the evidence of uncharged acts was adequate.