THE COURT OF APPEAL

Record No.: 236/2021

McCarthy J.
Kennedy J.
Donnelly J.

BETWEEN/

THE PEOPLE (AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS)

RESPONDENT

AND

J.O'C.

APPELLANT

JUDGMENT of the Court delivered by Ms. Justice Donnelly on this 26th day of January, 2023

Introduction

1. The appellant was convicted by a jury of two counts of sexually assaulting his granddaughter ("the first complainant") in his own home pursuant to s.2 of the Criminal Law (Rape)(Amendment) Act, 1990. His appeal against conviction raises legal issues which revolve primarily around the fact that, in the same trial, he also faced counts (of which he was acquitted) of other alleged sexual assaults against another granddaughter.

2. The appellant was charged with 22 counts on indictment of sexual assault pursuant to s.2 of the 1990 Act in relation to two complainants, who were sisters, with an age difference between them of approximately six years. Of the 22 counts on indictment, the first 15 related to the first complainant who was the elder of the two sisters. The appellant was convicted of two counts and was acquitted by direction of the trial judge of eleven counts in respect of the first complainant. The jury disagreed on two further counts alleging sexual assault on the first complainant. The other seven counts related to the younger granddaughter ("the second complainant") in respect of which the appellant was acquitted on all counts (six by direction of the trial judge and one by jury verdict). The fact that this was a joint trial in which he was acquitted of the majority of the counts, especially all counts in respect of the second complainant, forms the factual context for the grounds of appeal.

3. All 22 counts arose from incidents which allegedly took place upstairs in the appellant's home. At trial, counsel for the appellant made an application to sever the indictment between the two complainants, which was refused. He made an application for a direction

in respect of all counts concerning the second complainant which was granted in respect of all but one count of the seven counts.

4. The two counts referable to the first complainant in respect of which the jury convicted concerned:

   a) the year 2004 during which she turned from eight to nine years old and,

   b) the year 2005 during which she turned from nine to ten years old.

Trial

5. The first complainant gave evidence at trial that the abuse occurred on five or six separate occasions at a time when either or both of their grandparents would collect her from school and bring her to their home to be minded. Her evidence alleged that she was first sexually assaulted by the appellant at the age of eight and that these were committed against her up to the age of eleven or twelve. She alleged the assaults would occur when the appellant brought her to bed to read a story or practise reiki on her, and during these activities he would fondle her private parts and her breasts under her pyjamas. The abuse, she said, ceased when she did not need anyone to take her to bed. She said she disclosed the instances of sexual assault when she was aged approximately thirteen and the visits to her grandparents' house, for the purpose of being minded, stopped then.

6. She was cross-examined about her age at the time of disclosure and her evidence that this coincided with a particularly well-known murder case in Cork, the investigation of which commenced in January 2005 with the legal process concluding circa October 2006. If so, this would have put her age at ten or perhaps eleven years of age. The first complainant replies that she did not know 100% her age at time of disclosure, all she remembered was that they were discussing the case on the TV. Notes from a counsellor she had attended at age sixteen were put to her. In those notes it was recorded that she had said that her grandfather touched her once. She accepted that the counsellor was an accurate person and that she accurately recorded the full extent of what was said.

7. As a result of her evidence that the abuse occurred five or six times, counsel for the appellant requested that the trial judge direct verdicts in respect of the 15 counts referable to her. The trial judge directed verdicts of not guilty in respect of 11 of the counts, but left counts 1 to 4 inclusive to be decided by the jury.

8. The second complainant also gave evidence of being collected from school by the appellant. She said the appellant would take a "nap" after returning from work and she would go upstairs to his room. Her evidence was that "games" would be played and during these games, the appellant would fondle her private parts over her pyjamas. She said that the offending commenced when she was approximately "seven or eight" years old and ceased when she was approximately "nine or ten" when the visits to her grandfather's home ceased.

9. On cross-examination, she said the visits to the home ceased when she was "nine or ten". She was challenged about whether the abuse could have occurred between the ages of

seven and ten as the visits to her grandfather had ceased in 2011 when she was aged nine or ten.

10. The complainants' mother gave evidence that the disclosure of abuse by the first complainant took place when the complainant was thirteen years old. She confirmed that the second complainant made a disclosure of abuse around the year 2011. On cross-examination, the mother said that the first complainant commenced seeing a counsellor in November 2011. She was not in a position to confirm that neither the HSE nor TUSLA placed any prohibition on the appellant engaging with his other grandchildren following the disclosures.

11. After the prosecution evidence was complete, an application to dismiss all seven counts referable to the second complainant was made. This application was primarily based upon a conflict of evidence between all prosecution witnesses in relation to the dates on which the second complainant was at her grandparents' house. The trial judge directed not guilty verdicts in respect of all counts except one, leaving count 16 to be decided by the jury.

12. The appellant also gave evidence in the trial in which he estimated that the visits to the home had stopped in or about 2006 at which time his daughter moved home from London and temporarily lived in the house. His daughter gave evidence that the period of time she lived in the house was six to eight weeks. The appellant denied that any abuse took place and said that he rarely read stories to the complainants but if he did so, it would be downstairs.

13. At the conclusion of the trial, the issue paper given to the jury contained five counts: these were counts 1, 2, 3, 4 and 16 as they appeared on the indictment. The jury convicted by majority on counts 2 and 3. On counts 1 and 4, the jury disagreed. The jury returned a verdict of not guilty on count 16.

Grounds of Appeal

14. This appeal is based upon the following three grounds:

    i. the indictment should have been severed between the two complainants as failing to do so prejudiced the appellant's right to a fair trial,

    ii. the trial judge should have directed a verdict of not guilty in respect of all counts relating to the second complainant, the refusal of which denied the defence strong grounds for an application to discharge the jury, and

    iii. the verdicts of the jury on the two counts on which they convicted by majority were perverse, as there was nothing to distinguish those counts from the counts on which the jury disagreed.

Severing the Indictment

15. At trial, counsel for the appellant relied on s.6(3) of the Criminal Justice (Administration) Act, 1924, in the application to sever the indictment between the two complainants. It was

indicated that the applicable law in this matter was identified in *The People (DPP) v BK* [2000] 2 IR 199, and the test to be applied was *The People (DPP) v DMcG* [2017] IECA 98.

16. The trial judge applied the test in *People (DPP) v BK*. She outlined the similarities in the allegations of the two complainants:

> "… the prosecution sets out that the similarities in this case are that both the complainants are granddaughters of the accused. They were both being babysat after school or staying in their grandfather's house at weekends. They were of similar ages when the abuse is alleged to have commenced, in and around the age of eight. Both say they were isolated upstairs and both say the offences occurred in the bedroom, and the prosecution says that the allegations of reiki, storytelling in one complainant's evidence in the book of evidence and games or horseplay in relation to the other are similar enough to be a ruse or a guise and to isolate them upstairs away from the other."

17. Having also referred to the dissimilarities as referred to by the defence, the trial judge said she was of the view that the similarities in the complaints, although not identical, were such that it would be appropriate that they be tried together. She said that the similarities were that they were both granddaughters of the accused, the complaints were of abuse while being minded by him in his house, both said they were isolated upstairs, both were of a similar age when the alleged abuse started, both say the assaults occurred in the bedroom and that although there were differences in what was occurring when the abuse started, she said that these were a ruse or distraction to facilitate the abuse.

18. The differences that the appellant relied upon between the allegations of the two complainants in order to state that the trial judge ought to have severed the indictment are as follows:

a) one sister complained of touching under the clothes whereas the other complained of touching outside of the clothes;

b) the so-called modus operandi of the abuse as committed against the two complainants was sufficiently distinguishable to justify severing the indictment. The first complainant described the abuse taking place when being taken to bed by the appellant under the guise of telling bedtime stories, or occasionally when the appellant would perform reiki on her. The second complainant alleged that abuse took place during horseplay which involved picking her up and dropping her on the bed.

c) Counsel for the appellant also submitted that absence of any overlap in the timeline of the abuse of the two complainants further distinguished the allegations from each other. In the DPP's submission, there was a slight overlap in the timeline in the year 2008.

19. By the time of the oral hearing of the appeal, counsel for both parties made their submissions by reference to the Supreme Court decision in *The People (DPP) v Limen* [2021] 2 IR 546. This decision comprehensively addresses the law on joinder, severance, and cross-admissibility of complainants' evidence. In particular, the DPP relied on paras 17 and 32 of the judgment of Charleton J. in that case, and para 155 of the judgment of O'Malley J.. Counsel for the appellant relied upon para 155 sub paras (b) and (d) in particular of the judgment of O'Malley J..

20. Counsel for the appellant submitted at the hearing that, by reference to the evidence of the complainants, these offences were not of *the same or similar nature* and thereby the application to sever the indictment ought to have been granted. He relied upon the following from the judgment of O'Malley J. in *The People (DPP) v Limen* at para 155:

> "b) Where the accused is charged with multiple offences of the same nature against several individuals, some probative value may be found in the inherent unlikelihood that several people have made the same or similar false accusations. The accusations need not be identical or "strikingly similar" but must be of the same nature. However, similarity may add to the probative value, and the greater the similarity is, the greater the probative value."

21. At the appeal hearing, the Court questioned counsel for the appellant on his submission that the complaints made against the appellant should not be considered as being "offences of the same nature", that being the term used by O'Malley J. above. The Court also drew attention to the yet more recent decision of this Court, *The People (DPP) v PP* [2022] IECA 289, which applies the decision in *The People (DPP) v Limen*. In that judgment, delivered by Ní Raifeartaigh J., this Court said it had no hesitation in applying the principles identified in *Limen* on the basis that they now represent the current Irish law in this area.

22. It is neither necessary nor helpful to repeat the principles set out in *People (DPP) v Limen* and in *People (DPP) v PP*. It is sufficient to repeat that the Indictment Rules under the Criminal Justice Act, 1924, permit the joinder of counts in an indictment of offences that "form part of a series or offences of the same or similar character". As this Court said in *People (DPP) v PP*:

> "while the question of severing an indictment and the question of admitting evidence are conceptually distinct, the differences between them in a multi-complainant sexual assault case is unlikely to make much difference in practice, as was pointed out by O'Malley J. If the case is one where the evidence of one complainant is going to be ruled inadmissible in the trial of another complainant, it seems unlikely that they should be tried together. The question of the admissibility of the evidence of complainants in each other's trials is therefore relevant to the severance test (the 1924 Act test) although it is not exhaustive of, or identical with, it." (para 30)

Undoubtedly in this case there was no improper joinder of the counts in the indictment – they were of the same or similar character. The real issue was whether the trial judge ought to have severed the indictment because it would otherwise be unfair to the accused.

23. The submission of counsel for the appellant that principle (b) as set out by O'Malley J. in para 155 in *People (DPP) v Limen* supports the contention that the indictment ought to have been severed is unsustainable. Contrary to the submission that these are not offences of "the same nature", the judgments of O'Malley J. and of Charleton J. *in People (DPP) v Limen* are clear in their rejection that accusations must be identical or "strikingly similar"; so much is clear on the face of principle (b) as set out above. Indeed, having analysed the decision in *People (DPP) v BK*, O'Malley J. stated:

> "It might be observed here that, in an era when the courts have considerably more experience of trials of this nature, a key feature of the case against the accused would probably now be seen in the fact that a number of individuals who had during their childhood been in his care, and under his control, had alleged that he abused them when opportunities presented themselves. It is by no means apparent why it should be thought significant that some of those opportunities arose in a dormitory, and some in a caravan, when on each occasion the accused was the adult in charge of young boys. In my view, this result reflects the risk of treating the concept of similarity as setting down some form of "bright line" rule of admissibility, when it should be seen as simply an illustration of one way in which evidence of other offences may have probative value"

24. From the foregoing, it is beyond doubt that the allegations of the complainants in this case were of the same nature. Differences, such as those identified by counsel, did not affect the fact that these were allegations of offences of the same nature. That same nature was patently obvious from the type of the offending, the situational similarities, the relationships between the parties, the similarities in ages and indeed the subterfuge, or "ruse" as the trial judge called it, in which the appellant was alleged to have engaged in order to facilitate his offending. Not all, and perhaps not even a plurality of these factors, are required to be present for offences to be of the same nature but where they are, no argument to the contrary can be sustained. This submission is therefore rejected.

25. Counsel for the appellant additionally submitted that there was a concern about 'innocent mutual contamination' in cases like these relying on principle (d) of O'Malley J. as follows:

> "Where an application is made to sever the indictment (or, indeed, if the trial develops in such a way as to give rise to the issue), the judge will have to consider whether or not the complainants are independent of each other, and whether there are any grounds for concern that there may have been either collusion or innocent mutual contamination. This does not mean that, for example, accusations by a number of family members against a relative cannot be tried together. They may not be independent of each other, and may very probably have discussed the matter together and with other family members, but there may nonetheless be probative value in the content of their various accounts."

26. Counsel highlighted that the complaints made against the appellant by the second complainant were only made after she was made aware of the complaints of her elder sister almost a year after the first complainant made disclosures to their mother. It is noteworthy

that no application was made in those terms nor did they form part of the grounds of appeal nor of the written submissions. This submission has the appearance of being prompted by a perusal of the principles set out in para 155 of the judgment of O'Malley J. in *People (DPP) v Limen*. The judge cannot be criticised for not making a ruling on this issue if she was never asked to address that issue.

27. More important, however, is the fact that there is no basis for allowing the appeal on this issue. As this Court observed during the hearing of the appeal, these types of circumstances, where one family member makes an allegation of sexual abuse and their description of their experience resonates with another family member, are increasingly common. Merely because accusations are made by family members against a relative, who may have discussed the matter together and with other family members, does not mean that there cannot be probative value in the content of their various accounts. In the present case there was probative value in the content of their various accounts. Nothing in the evidence in this particular case causes a concern that this was a case in which the indictment required severance because of concern about collusion or innocent mutual contamination.

28. For the reasons set out, this ground of appeal is therefore rejected.

Evidence & Counts Referable to Second Complainant

29. The appellant's second ground of appeal was that the trial judge should have directed not-guilty verdicts on all counts referable to the second complainant, the younger granddaughter. This ground is predominantly founded in the second complainant's own evidence, and the contradictions between her evidence and that of other witnesses.

30. The contradiction in the second complainant's evidence is found in the timeline of the offending which was allegedly committed against her. The appellant refers to her evidence that she was sexually assaulted in her grandparents' house while she was between the ages of seven or eight and nine or ten. If this were the case, her elder sister would have been between the ages of thirteen and sixteen at the time. The evidence of the complainants' mother was that her eldest daughter first made an allegation of sexual abuse to her when she was thirteen years old. Both the first complainant and her mother gave evidence that they, as a family, ceased visiting the appellant's house immediately after the first allegation was made. The evidence was that the disclosure of the eldest daughter was prompted by her reaction to a television piece regarding a particularly high-profile Cork murder trial, a case which was widely reported on between January 2005 and October 2006. During that period, the first complainant would have been nine and ten, turning eleven in September 2006. During the course of the trial, the complainants' mother suggested, for the first time, that this television piece might have been a documentary rather than a news item.

31. The first complainant gave evidence that she recalled ceasing to visit the appellant's house when she was aged twelve or thirteen years old. Her mother gave evidence that the first complainant was thirteen when the disclosure was made and thus it would have been 2008 when they ceased visiting the appellant's home.

32. The evidence of both the first complainant and her mother would suggest that the second complainant did not visit the appellant's house after 2008, which was the year she turned seven. If that is correct, this evidence casts doubt about the second complainant's evidence that she suffered abuse at the hands of her grandfather at a time she was aged over seven years and up to ten years of age. When giving oral evidence, the second complainant was insistent that the visits to the appellant's home did not cease until 2011, when she was aged nine or ten.

33. At the trial, counsel for the appellant relied upon the contradictions in the evidence to submit that the jury ought to be directed because he was being asked to meet a case where prosecution witnesses were giving fundamentally different evidence on dates and timespans. Counsel for the appellant said that it was only possible for a jury to convict in relation to the second complainant if they were to believe one girl in relation to certain charges and to disbelieve her in relation to other charges. It was submitted that this would fly in the face of reason and make it such to bring it well within the second limb of the test in *R v. Galbraith* (1981) 73 Cr App R 124. It was not just that there was a vagueness or some kind of frailty, the submission was that it was entirely inconsistent with the case being made out by the prosecution. It was on this basis that the appellant applied to the trial judge that all seven counts related to the second complainant should be withdrawn from the jury.

34. In delivering her ruling on the application, the trial judge addressed the inconsistencies in relation to the dates and counts referable to the second complainant. She referred to the evidence of the first complainant, what the first complainant had told her counsellor whom she visited when still a child about when the abuse stopped, and what her mother said about the first complainant's disclosure (after which time the visits to the grandfather's house stopped). The trial judge held that as the mother had said that the visits had stopped when the first complainant made disclosures, and the first complainant was aged thirteen at that time, that any evidence of the second complainant beyond that time was so weak it ought not to go before the jury. This meant that only count 16 survived in respect of the complaints made by the second complainant.

35. In written submissions, the appellant submits that his application for a direction on all counts related to the second complainant was based on "a fundamental and irreconcilable internal contradiction *as between the evidence of the two complainants*", and not mere vagueness or inconsistencies (*our emphasis*). Counsel for the appellant submitted that no rational jury, properly charged and taking the prosecution evidence at its height, could have returned a safe verdict in the circumstances of the evidence in this case. Counsel submitted that the not-guilty verdict returned by the jury on the one count referable to the second complainant left to them supported this submission.

36. In contesting the appellant's application to direct acquittals, the DPP relied on the principles set out in both *The People (DPP) v M* [2015] IECA 65 as well as *R v. Galbraith*. The DPP submits that the *Galbraith* principles on the primacy of the jury as the "sole arbiter of issues of fact" were applied by the trial judge, as well as the *The People (DPP) v M* principles which

emphasise the second limb of *Galbraith* test on withdrawing a case from a jury. The combination of *M* and *Galbraith* highlights that withdrawing a case from a jury should be an exceptional measure reserved only for the purpose of "avoiding a manifest risk of wrongful conviction" (para 49, *People (DPP) v M*). These authorities assert that when there is a question of inconsistent evidence going to credibility or reliability of witnesses, it is a matter for the jury to decide. The trial judge should only interfere where the inconsistencies are deemed "to render it unfair to proceed with the trial" in the exercise of their discretion (para 51, *People (DPP) v M*).

37. In reaching our conclusion on this ground of appeal, we have regard to the fact that undoubtedly count 16 was left to the jury because it was an offence which was alleged to have occurred in 2008. As counsel for the appellant had to concede during the hearing of the appeal, this was a period in which it was "mathematically possible" for the offending to have taken place having regard to the timeline of the evidence of both complainants and of their mother. The counts on which the trial judge directed a not-guilty verdict were all dated 2009 and later.

38. We agree with the submissions of the DPP that the trial judge was obliged to take the evidence of the prosecution at its height. In leaving the single count related to the second complainant to the jury, the trial judge was engaging in an entirely appropriate exercise of her discretion. We consider that the submissions of the appellant amount in effect to a demand for a direction in any situation where there is a conflict of evidence between two complainants on matters going to a timeline of offences. To accept such a submission would be to usurp the role of a jury who are perfectly capable of deciding on such inconsistencies. In so far as there is an implication in the appellant's submissions that the *Galbraith* principles imply that mutually inconsistent evidence between witnesses requires a case to be withdrawn from a jury, we do not accept that proposition. We repeat what was said in *People (DPP) v M.* [2015] IECA 65 at para 48:

> "On the contrary, the emphasis in Galbraith is on the primacy of the jury in the criminal trial process as the sole arbiter of issues of fact. What Lord Lane was in fact saying in Galbraith was that even if the prosecution's evidence contains inherent weaknesses, or is vague, or contains *significant inconsistencies*, it is for the jury to assess that evidence and make of it what they will, unless the state of the evidence is so infirm that no jury, properly directed, could convict upon it. Accordingly, what Galbraith is in fact concerned with is fairness." (*Emphasis added*).

39. We are quite satisfied that there was no error on the part of the trial judge in refusing to withdraw count 16 from the jury.

40. For the sake of completeness, we will observe that though it may appear unusual that an appeal is being taken against a refusal to grant a direction where the appellant was subsequently acquitted in respect of that allegation, in this case the appellant's case was that if this direction had been granted, he may have had strong grounds for making an application at the trial to discharge the jury. His submission was that if he had achieved such a discharge, he would then have been entitled to a trial where he only had to deal

with the allegations of the first complainant on a retrial. It is unnecessary, therefore, to explore what, if any, effect, on his trial with regard to counts against the first complainant there would have been if he had been successful on his application for a discharge on all counts related to the second complainant.

Perverse Verdict

41. The appellant's final ground of appeal was that the verdict of the jury at trial was perverse. This ground of appeal was founded in the fact that the jury disagreed on two counts with which they were charged and convicted by majority on the other two. He also refers to the fact that the majorities were different on each one.

42. Although acknowledging that the jurisdiction to overturn a jury verdict on the basis of perversity was one to be exercised sparingly and in extraordinary circumstances, in essence the appellant's submission was that there were insufficient differences between each of the four counts referable to the first complainant that could distinguish them to the extent that justified the different jury verdicts on each count.

43. In response, counsel for the DPP relied on the high standard before the threshold for overturning a perverse verdict was reached and relied upon *The People (DPP) v. Tomkins* [2012] IECCA 82 and *The People (DPP) v. Nadwodny* [2015] IECA 307. The DPP further highlighted the decision of Birmingham P. in *The People (DPP) v. Alchimionek* [2019] IECA 49 in which the President emphasised the exceptional nature of a decision to quash a jury verdict.

44. Counsel for the appellant submitted that the evidence of the first complainant had not been date specific and individual allegations were not tied to particular events. Her evidence was of a description of the manner in which she alleged the sexual assault and an approximate age at which the offending commenced and ceased. It was submitted that the evidence in respect of count 1 on which the jury disagreed was in all respects identical to that given in respect of count 2 for which he was convicted.

45. The appellant's submission on one level appears to be an objection to the idea that the jury accepted in part and rejected in part the evidence of different witnesses. As a proposition of general application, it must be rejected; the jury is entitled to reject or accept a witness' evidence in whole or in part and indeed they are also entitled to accept or reject the prosecution evidence in whole or in part. This is part and parcel of the function of a jury. It may be that there is a rare and exceptional occasion - and we do not have to even make such a finding - that it would be perverse to accept part only of a particular witness' evidence. That was not the situation here, however. This was not a case where credibility or reliability could only be addressed in an entirely binary feature. This, like many cases of historic child sexual abuse, involved aspects of the reliability of memory (here concerning ages/dates and questions of opportunity to abuse) being measured against apparently objectively verifiable matters (the ending of the visits to the grandparents for minding). The resolution of those issues was quintessentially for the jury to tease out and resolve in this case.

46. It is important that a jury verdict is not interrogated. A jury has seen and heard evidence and may well be struck by matters that lawyers and judges do not consider particularly significant. It is often said (even in speeches or charges to the jury) that the value of a jury lies in the very fact that they are not case hardened; that they come with fresh eyes to the system of the administration of justice. Without meaning to "interrogate" the verdict, even a cursory glance at the evidence in this case demonstrates a variety of reasons why this jury may have accepted some, but not all, the evidence. In her evidence, the first complainant stated that the earliest she remembered was from eight years old. The jury did not agree on a verdict on count 1 which referred only to a period during which she would have been eight years old; but were prepared to accept that she was sexually assaulted at eight or nine years old as demonstrated by convicting on count 2 which referred to the calendar year 2004. The conviction on count 3 referred to the calendar year 2005 in the course of which she turned from nine years old to ten years old. Court 4, on which the jury disagreed, covered the calendar year 2006, when the first complainant turned from ten years old to eleven years old. Thus, the jury convicted on two counts which covered a period when the first complainant was between eight and ten years old inclusive but were not prepared to convict in a period when she was solely eight years old or in a period where she might have reached eleven years of age.

47. Furthermore, as brought out by the appellant in cross-examination, the first complainant made an early complaint to a counsellor which seemed to refer to one instance of abuse but, as brought out by the prosecution, her mother said that when she first complained she said that it happened "several times". The jury was entitled to accept beyond reasonable doubt that she was abused on two occasions but not on any more, and that this was during the period of time when she was between eight and ten but not, as count 4 alleged, when she was between the ages of ten and eleven. In so far as there was a different majority for the guilty verdicts, this, as a general principle, is immaterial. The Court cannot interrogate the jury verdict. As it happens in this case, it could have been that one member was only prepared to convict on one count because in his or her mind there was a doubt based upon what she had told the counsellor about only one occasion.

48. The Court is satisfied that this is not a case which comes anywhere near the threshold for demonstrating that the verdict was perverse. The jury was entitled to accept or reject all or part of the first complainant's evidence having regard to the evidence in the trial as a whole.

49. This ground of appeal is rejected.

Conclusion

50. The appellant has appealed his conviction on two counts of sexual abuse against his granddaughter on three grounds. The Court has addressed each of these grounds above and has rejected, for the reasons set out, each one. The appeal against conviction is therefore dismissed.

51. The appellant withdrew his appeal against sentence at the hearing of the appeal.